SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 66

CASE-SWAYNE CO., INC., PETITIONER,

vs.

SUNKIST GROWERS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

No. 333-58 PH

CASE-SWAYNE CO., INC. a corporation, Plaintiff,

v.

SUNKIST GROWERS, INC., a corporation, THE EXCHANGE ORANGE PRODUCTS COMPANY, a corporation, THE EXCHANGE LEMON PRODUCTS COMPANY, a corporation, Defendants.

COMPLAINT FOR DAMAGES—Filed April 15, 1958

Comes now the plaintiff and complains against the defendants and for cause of action alleges:

I.

Jurisdiction and Venue

1. This action arises under the Act of July 2, 1890, Chapter 647, Sections 1 and 2, 26 Stat. 209, commonly known as the "Sherman Act"; Act of October 15, 1914, Chapter 323 Sections 1, 2, 4 and 12, 38 Stat. 730, 731, 736; Act of June 19, 1936, Chapter 592 Section 1, 49 Stat. 1526; (15 U.S.C., Sections 1, 2, 12, 13, 15, and 22 respectively) as hereinafter more fully appears.

2. The alleged unlawful acts and violations hereinafter alleged and described, including the combination and conspiracy to restrain trade and commerce among the several [fol. 2] States of the United States, and the combination and conspiracy to monopolize a substantial part of the trade and commerce among the several States of the United

[File endorsement omitted]

States, and the discrimination in prices between different purchasers of commodities in interstate commerce, have been, and are, conceived, carried out, and made effective in part within the Southern District of California. The defendant Sunkist Growers, Inc., is found, has an agent, and transacts business within said district.

II.

Description of Plaintiff and Plaintiff's Business

3. The plaintiff Case-Swayne Co., Inc., is a corporation existing under and by virtue of the laws of the State of Nevada. Since on or about plaintiff's existence in 1945 plaintiff has established the business of purchasing by-product citrus fruit as hereinafter defined, consisting principally of by-product Valencia oranges, but also including by-product Navel oranges and by-product grapefruit, and the manufacturing of the same into such products as canned orange juice, canned grapefruit juice, and blends of canned juices consisting of blends of orange and grapefruit juice, orange and pineapple juice, and grapefruit and pineapple juice. Plaintiff has during all the times mentioned herein, marketed, sold and shipped said products in interstate commerce to retail markets and other outlets for resale. Products manufactured from by-product citrus fruit, including canned citrus juices, and canned blends of the same and also including citrus juice concentrates are herein referred to as "citrus fruit products." By-product citrus fruit used in the manufacture of said products is citrus fruit that is sometimes called "waste fruit" which by reason of appearance, size or other factors cannot be profitably marketed as fresh fruit. The phrase "by-product citrus fruit" when used in this complaint refers to by-product Valencia [fol. 3] and Navel oranges and by-product grapefruit, which, as aforesaid are the by-product citrus fruits that are used by plaintiff in its business. The business of plaintiff in purchasing by-product citrus fruit and manufacturing the same into citrus fruit products as aforesaid, and the

selling and shipping of said products in interstate commerce for resale, is hereinafter referred to in this complaint as plaintiff's citrus fruit products business. Since the existence of plaintiff in 1945, plaintiff has invested approximately $200,000.00 in the construction of a manufacturing plant and facilities for the operation and carrying on of its citrus fruit products business, and during all of the times of the acts and conduct of defendants and co-conspirators hereinafter complained of, has had manufacturing equipment with the capacity to utilize approximately 30,000 tons per year of by-product citrus fruit for manufacturing into citrus fruit products.

III.

Description of Defendants and Co-Conspirators

4. Defendant Sunkist Growers, Inc., is a non-stock membership corporation, organized and authorized to do business under the laws of the State of California, and is herein sometimes referred to as Sunkist. Its immediate members consist of approximately eighteen district exchanges, each of which, plaintiff is informed and believes, and therefore alleges the fact to be, has a member that is a director of Sunkist. Said district exchanges are composed of approximately 160 local associations or local exchanges, each of which operates a member packing-house for the purpose of harvesting citrus fruit, and putting it in shape to be marketed. Said local associations and local exchanges consist of approximately 12,000 growers of citrus fruit in the California-Arizona citrus fruit market as hereinafter defined. Said defendant Sunkist, said district exchanges, said local exchanges or local associations and said growers of citrus fruit, when referred to collectively in this complaint [fol. 4] will be referred to as "the Sunkist family". Agreements among the Sunkist family members provide for the marketing by defendant Sunkist of citrus fruit, (including by-product citrus fruit, by and through its subsidiary, defendant The Exchange Orange Products Company) and

citrus fruit products manufactured from by-product citrus fruit grown by the Sunkist family; plaintiff is informed and believes and therefore alleges the fact to be that said citrus fruit produced by the Sunkist family, is all produced in California and Arizona and is citrus fruit, including by-product citrus fruit, of the California-Arizona market, which market is hereinafter defined in this complaint.

5. Defendant The Exchange Orange Products Company is a corporation organized and existing under the laws of California. The plaintiff is informed and believes and therefore alleges the fact to be that said defendant The Exchange Orange Products Company is a wholly owned subsidiary of defendant Sunkist. Said defendant The Exchange Orange Products Company will sometimes hereinafter be referred to as Exchange Orange. Defendant Exchange Orange conducts the business of manufacturing by-product citrus fruit into citrus fruit products including the citrus fruit products manufactured by plaintiff, and also including concentrates for commercial use in beverages for soft drink manufacturers. The canned citrus fruit products manufactured by defendant Exchange Orange are sold and shipped by defendant Sunkist in retail markets and other outlets in interstate commerce for resale in competition with plaintiff in its citrus fruit products business. Defendant Exchange Orange also sells for Sunkist by-product citrus fruit not manufactured by defendant Exchange Orange into citrus fruit products.

6. Defendant Exchange Lemon Products Company is a corporation organized and existing under and by virtue of [fol. 5] the laws of California. Its stock is owned by associations affiliated with Sunkist which handle lemons. Its principal business is the manufacturing of citrus fruit products from by-product lemons of its stockholders. Said defendant is sometimes herein referred to as Exchange Lemon.

7. *Co-Conspirator Hyland-Stanford Company.* Hyland-Stanford Company is a corporation and is herein named as

co-conspirator with defendants. Hyland-Stanford has facilities for manufacturing citrus fruit products from by-product citrus fruit.

8. *Co-Conspirator General Foods Corporation.* General Foods Corporation is a corporation and is herein named as a co-conspirator. The Bireleys Division of General Foods Corporation has facilities for manufacturing citrus fruit products from by-product citrus fruit.

9. *Co-Conspirator Cold Gold Company.* Cold Gold Company is herein named as a co-conspirator and plaintiff is informed and believes and therefore alleges the fact to be that said company is a corporation. During 1957 and in prior years, Cold Gold Company purchased by-product citrus fruit from defendant Exchange Orange in the same manner and on the same basis as did plaintiff. Plaintiff is informed and believes and therefore alleges the fact to be that during the year 1957 defendant Exchange Orange sold said co-conspirator orange juice which had been extracted by defendant Exchange Orange, at such a price as to constitute an indirect price discrimination against plaintiff in sales to plaintiff of by-product citrus fruit as hereinafter more fully alleged.

IV.

Products and Markets.

10. *By-product Citrus Fruit of the California-Arizona Market.* Substantially all the citrus fruit marketed in the United States, is produced in California, Arizona, Florida and Texas. By-product citrus fruit grown in California and Arizona is herein referred to as "by-product citrus [fol. 6] fruit of the California-Arizona market". By-product citrus fruit of the California-Arizona market is a separate and distinct market of by-product citrus fruit and the only economical market available to plaintiff, and others similarly situated, for the purchase of by-product citrus fruit for operation of plaintiff's citrus fruit products business. Other markets for by-product citrus fruit are

not available to plaintiff by reason of the fact that transportation costs of by-product citrus fruit from such other markets make it impossible for plaintiff to compete at a profit with manufacturers of citrus fruit products located within or adjacent to such other markets.

11. *Control of By-Product Citrus Fruit of the California-Arizona Market.* During all the times and acts herein complained of, defendants Sunkist and Exchange Orange have maintained and controlled a monopoly of by-product citrus fruit of the California-Arizona market. Said defendants have controlled approximately 70 percent of said by-product citrus fruit. Of the remaining 30% of said by-product citrus fruit, approximately 22 percent is utilized by the growers or by companies associated with said growers by contract or otherwise, leaving a balance of approximately 8 percent of said by-product citrus fruit available to plaintiff and other independent manufacturers of citrus fruit products similarly situated from said California-Arizona market. Plaintiff at all times herein complained of and during all times since the establishing of plaintiff's citrus fruit products business has been dependent upon defendants Sunkist and Exchange Orange for obtaining by-product citrus fruit in sufficient supply for the successful continuation of plaintiff's citrus fruit products business.

12. *Control of the Trade of Citrus Fruit Products Manufactured from By-Product Citrus Fruit of the California-Arizona Market.* Defendant Sunkist has at all times herein complained of, marketed all citrus fruit products manu- [fol. 7] factured by defendant Exchange Orange from by-product citrus fruit of the California-Arizona market. It sells and ships said products among the various states for resale and is a competitor of plaintiff in plaintiff's citrus fruit products business. During the time of all the acts and conduct of defendants and co-conspirators herein complained of, it has marketed the majority of all the citrus fruit made from by-product citrus fruit of the California-Arizona market and its control of said trade has increased

and is increasing by reason of the acts and conduct of defendants and co-conspirators herein complained of.

V.

Interstate Commerce

13. By-product citrus fruit of the California-Arizona market is sold and shipped in interstate commerce and involves a continual stream of interstate commerce between California and Arizona. Citrus fruit products manufactured from by-product citrus fruit of the California-Arizona market are shipped and sold in interstate commerce and involve a continual stream of interstate commerce throughout the various States of the United States.

VI.

Violations of Antitrust Laws

14. Within three years last past, defendants and co-conspirators have done the following acts and have been guilty of the following conduct:

Defendants and co-conspirators have combined and entered into contracts and have conspired to restrain the trade and commerce among the several states in by-product citrus fruit of the California-Arizona market and in citrus fruit products manufactured from by-product citrus fruit of the California-Arizona market. Defendants Sunkist and Exchange Orange have conspired with themselves and with defendant Exchange Lemon and co-conspirators in order to [fol. 8] monopolize the trade and commerce amongst the several states in by-product citrus fruit of the California-Arizona market and in citrus fruit products manufactured from by-product citrus fruit of the California-Arizona market. Defendants Sunkist and Exchange Orange have attempted to monopolize and have monopolized the trade and commerce among the several states in by-product citrus fruit of the California-Arizona market and in citrus fruit products manufactured from by-product citrus fruit of the

California-Arizona market. Defendants Sunkist and Exchange Orange did monopolize and attempt to monopolize the trade and commerce amongst the several states in by-product citrus fruit of the California-Arizona market to such an extent that the price of by-product oranges in said market has been unduly enhanced. Defendants Exchange Orange and Sunkist have indirectly discriminated in prices in the sale of by-product oranges of the California-Arizona market between different purchasers of said by-product oranges of like grade and quality. That said products involved are in interstate commerce and are sold for resale within the United States. That all of said acts and conduct were done by defendants and co-conspirators for the purpose of eliminating plaintiff as a competitor of Sunkist in plaintiff's citrus fruit products business.

15. That within three years last past, pursuant to and to effectuate said conspiracies and monopolies and attempts to monopolize as above alleged and with the purpose and design of limiting and eliminating the supply of by-product citrus fruits of the California-Arizona market available to plaintiff and others similarly situated and to prevent plaintiff from operating at a profit and to eliminate plaintiff as competitor of defendants Sunkist and Exchange Orange in plaintiff's citrus fruit products business, defendants and co-conspirators have done the following acts and have entered into the following agreements and conspiracies:

(a) Defendants did agree and conspire among themselves [fol. 9] that defendant Exchange Lemon would manufacture for defendants Sunkist and Exchange Orange citrus fruit products from by-product citrus fruit of the California-Arizona market at a fee basis in order to limit the supply of by-product citrus fruit available to plaintiff and others similarly situated. Pursuant to said agreement and conspiracy defendant Exchange Lemon did manufacture citrus fruit products from said by-product citrus fruit for defendants Sunkist and Exchange Orange at a fee basis.

(b) Defendant Sunkist and defendant Exchange Orange did agree and conspire with co-conspirator Hyland-Stanford for said co-conspirator to manufacture for defendants Sunkist and Exchange Orange citrus fruit products from by-product citrus fruit of the California-Arizona market at a fee basis in order to limit the supply of said by-product citrus fruit available to plaintiff and others similarly situated. That pursuant to said agreement and conspiracy, said co-conspirator Hyland-Stanford did manufacture citrus fruit products from said by-product citrus fruit for defendants Sunkist and Exchange Orange at a fee basis.

(c) Defendants Sunkist and Exchange Orange did agree and conspire with co-conspirator General Foods Corporation for said co-conspirator to manufacture for defendants Sunkist and Exchange Orange citrus fruit products from by-product citrus fruit of the California-Arizona market at a fee basis in order to limit the supply of by-product citrus fruit available to plaintiffs and others similarly situated; that pursuant to said agreement and conspiracy said co-conspirator did manufacture citrus fruit products for defendants Sunkist and Exchange Orange at a fee basis.

(d) Plaintiff is informed and believes and therefore alleges the fact to be that defendant Sunkist repre- [fol. 10] sented to the U. S. Department of Agriculture, that there was surplus production of by-product oranges from the California-Arizona market and offered to sell orange juice made from the same to the U. S. Department of Agriculture for what is known as the "school lunch program". Plaintiff is informed and believes and therefore alleges the fact to be that defendant Sunkist urged the purchase of said orange juice made from said by-product oranges. The fact is. there was no surplus of by-product oranges from said market as all could have been utilized by companies in the citrus fruit products business such as plaintiff. Pursuant to said representations Sunkist did sell or-

ange juice to the U. S. Department of Agriculture made from by-product oranges of the California-Arizona market. Plaintiff is informed and believs and therefore alleges the fact to be that the return from such sale was substantially lower than could have been obtained had the by-product oranges from which the orange juice was made been sold on the market to such independent dealers as plaintiff in the citrus fruit products business.

Arizona market. Plaintiff is informed and believes and (e) Defendant Sunkist did prevent plaintiff from obtaining by-product oranges of the California-Arizona market from Placentia Orange County Exchange which plaintiff had contracted and agreed to purchase from said Placentia Orange County Exchange. With respect to this transaction plaintiff alleges: Placentia Orange County Exchange is a member of the Sunkist family. In 1957 plaintiff was obtaining oranges from Placentia Orange County Exchange under an agreement with said Exchange for the 1957 season. Before the season was over said Exchange refused to perform under this agreement; plaintiff is informed and believes and therefore alleges the fact to be that the reason for said lack [fol. 11] of performance was that defendant Sunkist would not permit said Exchange to perform and remain a member of the Sunkist family.

(f) Plaintiff is informed and believes and therefore alleges the fact to be that sometime in the season of 1957, defendant Sunkist brought pressure to bear on the members of the Sunkist family to prevent any member from selling by-product citrus fruit to independent companies such as plaintiff. Plaintiff is informed and believes and therefore alleges the fact to be that defendant Sunkist did threaten to terminate its Sunkist marketing agreement with any of its family members that might by any method sell by-product citrus fruit to independent companies.

(g) Plaintiff is informed and believes and therefore alleges the fact to be that defendants Sunkist and Ex-

change Orange conspired and agreed with co-conspirator Cold Gold Company for said company to indirectly purchase from Exchange Orange by-product oranges produced in the California-Arizona market at discriminatory prices, viz: Plaintiff is informed and believes and therefore alleges the fact to be that said defendants did sell to said co-conspirator said by-product oranges at discriminatory prices by the device of extracting the juice and selling the juice to said con-conspirator at prices which were discriminatory in consideration of the cost to defendants of extracting the juices and the price charged for said juice as extracted.

(h) During the year 1956 defendants Sunkist and Exchange Orange manipulated the prices of by-product citrus fruit of the California-Arizona market and citrus fruit products made from the same with the design and purpose of forcing plaintiff and others similarly situated to sell citrus fruit products at a loss. With respect to this price manipulation, plaintiff al- [fol. 12] leges as follows: During the year 1956 Exchange Orange sold by-product citrus fruit only on a bid basis, by calling for bids from plaintiff and other citrus fruit products manufacturers on such by-product citrus fruit as Exchange Orange offered for sale. After plaintiff had made its purchases and commitments for purchase of by-product citrus fruit for the 1956 season Sunkist lowered its prices during said season on citrus fruit products it sold in competition with plaintiff to such an extent that if plaintiff had sold its citrus fruit products at competitive prices plaintiff would have necessarily suffered a substantial loss on the sale of said citrus fruit products.

16. Plaintiff does not know the exact times and places of the acts and conduct of defendants and co-conspirators above complained of but such information is within the knowledge of defendants and co-conspirators.

VII.

Damages

17. That by reason of the acts and conduct of defendants and co-conspirators as above alleged, plaintiff has been and now is unable to obtain by-product citrus fruit in quantities sufficient to enable it to continue plaintiff's citrus fruit products business at a profit. That as aforesaid, plaintiff since the year 1945 has established itself in its said business and has from said time until the said acts of defendants and co-conspirators complained of, established a profitable business. That by reason of the acts and conduct of the defendants and co-conspirators, plaintiff's citrus juice business has been destroyed and plaintiff has been unable to conduct said business at a profit. That by reason of the above facts herein alleged in this complaint plaintiff has lost profits, been damaged in its citrus fruit products busi-
[fol. 13] ness and its property and in the loss of future profits it reasonably could have anticipated, in the amount of $800,000.00.

Wherefore plaintiff prays for judgment for damages in the sum of $800,000.00, and prays that said damages be trebled pursuant to Section 4 of Act of October 15, 1914, Chapter 323, 38 Stat. 731 (15 U.S.C. Section 15) making a total judgment in the amount of $2,400,000.00, for costs of suit, and a reasonable attorneys fee.

Dated this 14th day of April, 1958.

Respectfully submitted,

J. Edward Johnson, W. Glenn Harmon, William H. Henderson.

Demand for Jury Trial

Plaintiff does hereby demand a jury trial in the above cause.

J. Edward Johnson, W. Glenn Harmon, William H. Henderson.

[fol. 155]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 WB

CASE-SWAYNE CO. INC., Plaintiff,

v.

SUNKIST GROWERS, INC., *et al.*, Defendants.

DEFENDANTS' ANSWER TO COMPLAINT—Filed July 21, 1958

Now come the defendants, Sunkist Growers, Inc., (hereinafter sometimes referred to as "Sunkist"), The Exchange Orange Products Company (hereinafter sometimes referred to as Exchange Orange), and Exchange Lemon Products Company (hereinafter sometimes referred to as Exchange Lemon), and in answer to the complaint herein jointly and severally state:

• • • • • • •

[fol. 169]

Third Defense

19. Defendants are agricultural cooperative marketing associations meeting the requirements of both Section 6 of the Clayton Act (15 USC Section 17) and the Capper-Volstead Act (7 USC Sections 291, 292); and their claimed violations of law are exempt from the antitrust laws by said statutes.

• • • • • • •

[fol. 170] Dated: July 18, 1958.

Allen F. Mather, Donald D. Stark, Roy H. Mann,
By Donald D. Stark, Attorneys for Defendants.

[File endorsement omitted]

[fol. 222]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION
No. 333-58 WB

CASE-SWAYNE CO., INC., a corporation, Plaintiff,

v.

SUNKIST GROWERS, INC., a corporation, THE EXCHANGE ORANGE PRODUCTS COMPANY, a corporation, and EXCHANGE LEMON PRODUCTS COMPANY, a corporation, Defendants.

NOTICE OF MOTION TO DISMISS AS TO DEFENDANTS EXCHANGE ORANGE AND EXCHANGE LEMON—Filed November 3, 1958

To:

J. Edward Johnson, W. Glenn Harmon, 1400 Central Tower, 703 Market Street, San Francisco 3, California.

William H. Henderson, Suite 1010-1011 Boston Bldg., Salt Lake City 11, Utah.

PLEASE TAKE NOTICE that on the 17th day of November, 1958, at 9:45 A.M., or as soon thereafter as counsel can be heard, defendants will move the court as follows:

(a) To dismiss this action as to defendants The Exchange Orange Products Company and Exchange Lemon Products Company; and

[fol. 223]

(b) For an order amending the title of this action to conform to said dismissal.

[File endorsement omitted]

The said motion will be based upon this notice, the motion papers attached hereto, and the pleadings on file in the above entitled action.

Dated: November 1, 1958.

Allen F. Mather, Donald D. Stark, Roy H. Mann,
By Donald D. Stark, Attorneys for Defendants.

[fol. 224]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 WB

CASE-SWAYNE CO., INC., a corporation, Plaintiff,

v.

SUNKIST GROWERS, INC., a corporation, THE EXCHANGE ORANGE PRODUCTS COMPANY, a corporation, and EXCHANGE LEMON PRODUCTS COMPANY, a corporation, Defendants.

STATEMENT OF REASONS IN SUPPORT OF MOTION TO DISMISS AS TO TWO DEFENDANTS—Filed November 3, 1958

This motion by defendants to dismiss this action as to defendants The Exchange Orange Products Company and Exchange Lemon Products Company is based upon the following facts and circumstances:

(1) On October 31, 1958 The Exchange Orange Products Company, a wholly owned subsidiary, was merged into Sunkist Growers, Inc. By reason of said merger, pursuant to Section 1215 of the California Agricultural Code and Section 4124 of the California Corporations Code, said Sunkist

[fol. 225] Growers, Inc. acquired all of the estate, property, rights, privileges and franchises and assumed all of the liabilities and obligations of The Exchange Orange Products Company. The separate corporate existence of The Exchange Orange Products Company thereupon ceased.

(2) On October 31, 1958 Exchange Lemon Products Company merged into Sunkist Growers, Inc. By reason of said merger, pursuant to Section 1215 of the California Agricultural Code and the General Corporation Laws, all of its rights and property were succeeded to and all of its obligations assumed by the surviving corporation, Sunkist Growers, Inc. The separate corporate existence of Exchange Lemon Products Company thereupon ceased.

(3) Attached hereto is the affidavit of D. M. Anderson, Secretary of Sunkist Growers, Inc., certifying to the aforesaid merger.

Dated: November 1, 1958.

Allen F. Mather, Donald D. Stark, Roy H. Mann,
By Donald D. Stark, Attorneys for Defendants.

[fol. 226]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 WB

CASE-SWAYNE CO., INC., a corporation, Plaintiff,

v.

SUNKIST GROWERS, INC., a corporation, THE EXCHANGE ORANGE PRODUCTS COMPANY, a corporation, and EXCHANGE LEMON PRODUCTS COMPANY, a corporation, Defendants.

AFFIDAVIT OF D. M. ANDERSON IN SUPPORT OF MOTION TO DISMISS AS TO TWO DEFENDANTS—Filed November 3, 1958

County of Los Angeles,
State of California, *ss.*:

D. M. ANDERSON being first duly sworn, deposes and says:

1. I am the duly elected and acting secretary of Sunkist Growers, Inc., the California cooperative marketing corporation named as defendant in the above entitled action.

2. I certify that on October 31, 1958, there was filed with the Secretary of State of the State of California all documents necessary and proper to accomplish the merger of [fol. 227] The Exchange Orange Products Company and Exchange Lemon Products Company into said Sunkist Growers, Inc., pursuant to the General Corporation Laws of the State of California.

D. M. Anderson.

Subscribed and sworn to before me this 1st day of November, 1958.

Helen L. Cleary, Notary Public in and for said County and State. My Commission expires September 22, 1961.

(SEAL)

[fol. 228]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 WB

CASE-SWAYNE CO., INC., a corporation, Plaintiff,

v.

SUNKIST GROWERS, INC., a corporation, THE EXCHANGE ORANGE PRODUCTS COMPANY, a corporation, and EXCHANGE LEMON PRODUCTS COMPANY, a corporation, Defendants.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS AS TO TWO DEFENDANTS—Filed November 3, 1958

1. The effect of merger under the California Corporation Laws is that the assets and liabilities of the constituent corporations are acquired and assumed by the surviving corporation.

Calif. Corp. Code Sections 4116 and 4124.

2. Where the surviving corporation is already a party defendant there is a substitution by operation of law and [fol. 229] it would be futile and unnecessary to continue the action to judgment against a merged defendant. The only effective judgment would be that binding the survivor corporation.

Dated: November 1, 1958

Calif. Corp. Code Section 4116.

Allen F. Mather, Donald D. Stark, Roy H. Mann,
By Donald D. Stark, Attorneys for Defendants.

[fol. 611]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 WB

CASE-SWAYNE CO., INC., Plaintiff,

v.

SUNKIST GROWERS, INC., Defendant.

ORDER DISMISSING DEFENDANTS THE EXCHANGE ORANGE PRODUCTS COMPANY AND EXCHANGE LEMON PRODUCTS COMPANY—Entered December 5, 1958

Defendants having moved to dismiss as to defendants The Exchange Orange Products Company and Exchange Lemon Products Company on the ground that they have been merged into defendant Sunkist Growers, Inc., and the parties having filed appropriate memoranda and the court having heard this matter, and it appearing that defendants The Exchange Orange Products Company and Exchange Lemon Products Company have merged into defendant Sunkist Growers, Inc.

It Is Hereby Ordered that defendants The Exchange [fol. 612] Orange Products Company and Exchange Lemon Products Company be dismissed from this action.

Dated: December 5, 1958.

Wm. M. Turner
Judge

Approved as to form pursuant to Local Rule 7.

W. G. Harmon, for Attorneys for Plaintiff.

[File endorsement omitted]

[fol. 1078]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 S

CASE-SWAYNE CO., INC., a corporation, Plaintiff,

vs.

SUNKIST GROWERS, INC., Defendant.

SUPPLEMENTAL COMPLAINT—Lodged March 20, 1962 and Filed June 29, 1962

Comes Now the plaintiff in the above entitled cause, and upon leave of Court, duly obtained, files this Supplemental Complaint, to supplement the complaint filed April 15, 1958 by setting forth and pleading transactions, occurrences and events which have happened since the filing of the complaint on April 15, 1958, and seeking supplemental relief with respect thereto:

1. Defendant Sunkist Growers, Inc. shall herein be referred to as Sunkist. The Exchange Orange Products Company, a corporation, shall herein be referred to as Exchange Orange. Exchange Lemon Products Company, a corporation, shall herein be referred to as Exchange Lemon. The phrase orange products business refers to the business of manufacturing orange products (such as, but not exclusively, canned orange juice and blends of same) from product oranges, and selling said orange products for resale. Product oranges refers to oranges sold or utilized [fol. 1079] for manufacture into orange products.

[File endorsement omitted]

2. That since and from April 15th, 1958 to October 31st, 1958, Sunkist and Exchange Orange continued to combine, contract and conspire with each other to restrain trade in product oranges of the California-Arizona market and products manufactured therefrom in violation of Section 1 of the Sherman Act. That since and from April 15th, 1958 to October 31st, 1958, Sunkist and Exchange Orange continued to combine and conspire to monopolize trade in product oranges of the California-Arizona market and products manufactured therefrom in violation of Section 2 of the Sherman Act. That since and from April 15th, 1956 to October 31st, 1958 Sunkist and Exchange Lemon continued to contract, combine and conspire to restrain trade in product oranges of the California-Arizona market and products manufactured therefrom in violation of Section 1 of the Sherman Act. That since and from April 15th, 1958 to and including October 31st, 1958, Sunkist and Exchange Lemon did combine, and conspire to monopolize trade in product oranges of the California market and products manufactured therefrom in violation of Section 2 of the Sherman Act. That since and from April 15, 1958 to October 31st, 1958, Exchange Orange continued to attempt to monopolize the trade and products manufactured therefrom in violation of Section 2 of the Sherman Act. That since and from April 15, 1958 to October 31st, 1958 Exchange Orange continued to monopolize trade in product oranges in the California-Arizona market and products manufactured therefrom in violation of Section 2 of the Sherman Act. That on or about October 31st, 1958, Sunkist, Exchange Orange and Exchange Lemon merged into a single corporation, viz, defendant Sunkist Growers, Inc., whereby Sunkist acquired the assets of Exchange Orange and Exchange Lemon and all of the obligations of Exchange Orange and Exchange Lemon were assumed by Sunkist. Said merger constituted a conspiracy and combination to restrain and monopolize trade in product oranges of the California-[fol. 1080] Arizona market and products therefrom in viola-

tion of Sections 1 and 2 of the Sherman Act, and also the effect of such merger was to tend to create a monopoly of such trade in violation of Section 7 of the Clayton Act. That since and from April 15, 1958, Sunkist has and continues to attempt to monopolize trade in product oranges of the California-Arizona market and products manufactured therefrom and continues to contract, combine and conspire to restrain and monopolize trade in product oranges in violation of Sections 1 and 2 of the Sherman Act. That since and from April 15, 1958, Sunkist has monopolized and continues to monopolize trade in product oranges of the California-Arizona market and products therefrom in violation of Section 2 of the Sherman Act.

3. Since and from April 15, 1958, pursuant to and to effectuate said conspiracies, combinations, monopolies and attempts to monopolize, as above alleged, and with the purpose and design of limiting and eliminating the supply of product oranges from California and Arizona available to plaintiff and others similarly situated, and to eliminate plaintiff and others similarly situated from the orange products business, Sunkist, Exchange Orange and Exchange Lemon have done and Sunkist continues to do, predatory acts which have decreased and limited the quantity of product oranges plaintiff could obtain from plaintiff's orange products business. The acts and conduct of Exchange Orange herein mentioned were done with the understanding, consent and acquiescence and agreement of Sunkist, and the acts and conduct of Sunkist herein mentioned were done with the understanding and agreement and acquiescence of Exchange Orange. There was a continuing understanding between Sunkist and Exchange Orange with respect to marketing of product oranges and orange products. That said acts by and with respect to Exchange Orange and Exchange Lemon took place from April 15, 1958 to October 31, 1958, when said defendants merged with Sunkist. Sunkist at all times from April 15, 1958 has continued to do [fol. 1081] said acts, and does now continue to do said acts. That said acts are as follows:

(a) Sunkist has solicited, negotiated and entered into and there presently exist, exclusive dealing contracts between Sunkist and other corporations in California and Arizona called District Exchanges, and certain corporations, individuals and partnerships herein called Citrus Packing Houses, who pick, wash, grade, and pack oranges for orange growers. The Citrus Packing Houses agree to maintain in force appropriate agreements between themselves and orange growers, providing for delivery to Citrus Packing Houses, of all oranges grown by the growers, and the said Citrus Packing Houses agree to market such oranges through the District Exchanges and Sunkist. The District Exchanges agree to market all such oranges through Sunkist. Sunkist is agent in all matters concerning the marketing of said oranges. Sunkist has enforced said agreements and forced Citrus Packing Houses and District Exchanges to market oranges controlled by them exclusively through Sunkist.

(b) From April 15th, 1958 Sunkist has controlled and Sunkist continues to control, from approximately 69% to 75% of all oranges grown in California and Arizona, and has controlled and Sunkist continues to control approximately the same percentage of said oranges utilized as product oranges from California and Arizona. By reason of this combined control of oranges from California and Arizona Sunkist has continued to have the power to control the prices of product oranges from California and Arizona, to limit the supply of said oranges to plaintiff and others similarly situated, to manipulate the prices of said oranges, and to increase the percent of oranges marketed as fresh fruit. Sunkist has exercised this power to decrease the supply of product oranges available to plaintiff and others similarly situated.

(c) Sunkist and Exchange Lemon continue to conspire for Exchange Lemon to manufacture orange and grapefruit products for Sunkist on a cost basis which permitted Sun- [fol. 1082] kist and Exchange Orange to utilize more prod-

uct oranges and thus limit and squeeze the supply available to plaintiff and others similarly situated.

(d) Since the merger of Sunkist, Exchange Orange and Exchange Lemon, above mentioned Sunkist has carried on the manufacturing and other activities that had been carried on by Exchange Orange and Exchange Lemon, including acts to limit the supply of product oranges to plaintiff. By reason of the merger Sunkist became a manufacturer of orange products and more effectively utilized the manufacturing facilities formerly owned by Exchange Lemon and Exchange Orange to manufacture orange products and thus reduced the supply of product oranges to plaintiff and others similarly situated. Sunkist has also handled sale of product oranges to independent manufacturers of orange products at such times as product oranges controlled by Sunkist were sold.

4. Plaintiff does not know the exact times and places of the acts and conduct of Sunkist, Exchange Orange and Exchange Lemon herein complained of nor of other transactions, occurrences or events which have happened since April 15, 1958 in violation of the antitrust laws herein alleged. Such facts are within the peculiar knowledge of Sunkist, the surviving corporation of Sunkist, Exchange Orange and Exchange Lemon.

5. That as alleged herein, Sunkist's acts in violation of the antitrust laws are continuing and plaintiff is threatened with continued loss of profits in its orange products business unless injunctive relief is ordered by this Court.

6. That by reason of the acts and conduct of Sunkist, Exchange Orange and Exchange Lemon in so limiting the quantities of product oranges plaintiff could have obtained and utilized in its orange products business, plaintiff has lost profits plaintiff otherwise would have made in said business from April 15, 1958 to January 31, 1962, in the sum of approximately $1,412,000, in addition to damages suffered by plaintiff to April 15th, 1958.

[fol. 1083] Wherefore, plaintiff prays for judgment against Sunkist as follows:

1. For damages caused by acts of defendant from April 15th, 1958 to January 31st, 1962, in the sum of $1,412,000.00, in addition to the damages plaintiff suffered to April 15, 1958, and plaintiff prays that said damages be trebled pursuant to Section 4 of the Act of October 15th, 1914, Chapter 323, 38 Stat. 731 (15 U.S.C.A. Sec. 15) making a total additional judgment in the amount of $4,236,000.00.

2. For injunctive relief by the Court pursuant to Sec. 16 of Act of October 15th, 1914, Ch. 323, 38 St. 737 (15 U.S. C.A. Sec. 26) ordering and enjoining Sunkist from continuing its acts in violation of the antitrust laws herein complained of.

3. For reasonable attorneys fees and costs.

Dated this 19th day of March, 1962.

J. Edward Johnson, W. Glenn Harmon, William H. Henderson, By W. Glenn Harmon, Attorneys for Plaintiff.

[fol. 1084] Certificate of Service (omitted in printing).

[fol. 1084a]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

Honorable Harry C. Westover, Judge Presiding.

No. 333-58 HW Civil

CASE-SWAYNE CO., INC., a corporation, Plaintiff,

vs.

SUNKIST GROWERS, INC., Defendant.

Transcript of Proceedings—March 2, 1964

Los Angeles, California

* * * * * *

[fol. 1084b] Mr. Hufstedler: I agree, your Honor, but before we do that, may we define for a moment the scope of

this argument, because I think it is important in this proceeding. The stipulation before the court on this matter that you are now discussing was drafted prior to the filing of the supplemental pleading, so that that stipulation covers the first three years we are talking about.

Just prior to our argument here today we were discussing with Mr. Henderson how we should best resolve that problem so that this Court's determination would cover the [fol. 1084c] entire issues before the court, and Mr. Henderson suggested, I think quite appropriately, that we agree that the facts as stated in your present stipulation are substantially identical to the present facts, that is, there has been no material change, with one exception, and that is that in 1958, as the pleadings before the court show, there was an actual merger in Sunkist, so that Exchange Orange and Exchange Lemon did cease their independent corporate existence and became a part of the Sunkist Corporation itself as a formal matter.

Beyond that, we believe the facts are identical and I would like to suggest that we include that matter at this time so that before we dispose of that Capper-Volstead matter we have a clear understanding that we are talking about the entire period before the court and not just a limited period.

Mr. Henderson: Counsel has stated me correctly. I did propose that and I so agree.

Mr. Hufstedler: Very well. We will then stipulate, with the court's permission, that in discussing this Capper-Volstead matter, we are discussing the entire period involved in the original and supplemental complaint.

Mr. Henderson: So stipulated.

The Court: Very well.

* * * * * *

[fol. 1307]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 HW

CASE-SWAYNE CO., INC., Plaintiff,

vs.

SUNKIST GROWERS, INC., Defendant.

PRETRIAL ORDER NO. ONE—Lodged April 15, 1964 and Filed April 22, 1964

On Monday, March 2, 1964, there came on regularly to be heard before the Honorable Harry C. Westover, United States District Judge, in Courtroom No. 5 in the United States Post Office and Courthouse, Los Angeles, California, a preliminary Pretrial Conference and the following motions and other matters:

1. Motion by plaintiff for order requiring production of documents pursuant to Rule 34 Federal Rules of Civil Procedure.
2. Defendant's Objection to Interrogatories.
3. Motion of defendant to set the Capper-Volstead issue for argument, to sever the Supplemental Complaint for trial, and to authorize a responsive plead- [fol. 1308] ing and certain motions to the Supplemental Complaint, and to set the time therefor.

In connection with the foregoing items, the Court had before it various affidavits, memoranda of points and authorities, and statements of reasons.

[File endorsement omitted]

In addition, the Court had before it the joint Stipulation of Relevant Facts and Material Issues of Law Relative to Issue Raised by Capper-Volstead Defense, together with the briefs filed by the parties on said issue. The parties stipulated in open court, through their respective counsel, that the facts relating to the Capper-Volstead defense for the period covered by the Supplemental Complaint were in all material respects the same as the facts stated in the above stipulation, with the exception of the fact that in 1958 Sunkist, Exchange Orange and Exchange Lemon were all merged into one organization, Sunkist Growers, Inc., and for that reason the ruling of the Court upon the Capper-Volstead defense should apply to the entire period covered in the original and supplemental complaints. The Court approved said stipulation.

The Court heard oral argument upon the issues relating to the Capper-Volstead defense.

After reviewing all of the above documents and hearing oral arguments in open court, and good cause therefor appearing, the Court now makes the following orders, to constitute Pretrial Order No. One in the within cause:

1. The Court determines and rules that at all periods of time covered by the original and supplemental complaints on file herein, Sunkist Growers, Inc., Exchange Orange and Exchange Lemon have complied with, and have constituted one duly qualified agricultural cooperative under Section 1 of the Capper-Volstead Act, 7 U.S.C.A. Section 291.

2. The Court determines and rules that during the period covered by the original and supplemental complaints, an [fol. 1309] illegal conspiracy in violation of the Sherman Act could not exist solely between Sunkist Growers, Inc., Exchange Orange and Exchange Lemon, nor between any two of them, or between Sunkist Growers, Inc., and any other part of the Sunkist system (including District Exchanges, Associations and growers affiliated therewith).

3. All motions before the Court are denied without prejudice to their renewal at a later date.

4. All objections to interrogatories and objections to the motion to produce documents are sustained without prejudice to resubmitting the interrogatories and motions at a later date.

5. By April 1, 1964, the plaintiff is to file with the Court and serve upon the defendant a statement of its theory of the liability in this case, in accordance with its declaration in open court that this action is based on claimed monopolization. The plaintiff may, if it so chooses, incorporate by appropriate reference documents or parts thereof which it has previously filed in this case. The Court contemplates that after said statement is filed, it will request the plaintiff to file a statement of the evidence which supports said theory of liability. Thereafter, if necessary, the defendant will be ordered to file a statement of its theory of nonliability.

6. Both parties are ordered to serve and file their opening statements to the jury by June 1, 1964, which statements shall not take more than thirty minutes to state to the jury. The Court will permit counsel to depart from the phraseology contained in said statements, but not from the general subject matter thereof.

7. The Court orders each party to file its proposed jury instructions, accompanied by citations of authority for each instruction, by June 1, 1964.

8. The Court orders that all documents necessary to bring this case to trial be filed with the Court by a date to be later fixed by the Court. Each party shall prepare [fol. 1310] and file an index of all documents submitted by it.

9. The Court directs the defendant to prepare the pretrial order in this case. After it has been submitted to counsel for the plaintiff, the plaintiff may file objections with the Court, and if the Court deems that a hearing is necessary, the hearing will be set and the Court will determine the pretrial order.

10. The Court sets the within cause for trial at 10:00 a.m. on Monday, November 9, 1964, in Courtroom No. 5 in the United States Post Office and Courthouse, in the City of Los Angeles, County of Los Angeles, State of California.

11. The Court orders that at the trial of this cause the issue of liability shall be tried first and separately from the issue of damages and thereafter, if the jury finds for the plaintiff on the issue of liability, the trial of the issue of damages shall take place. Said trial shall be before the same jury that tried the issue of liability, unless the parties stipulate that it may be before a different jury.

Dated: April 21st, 1964.

Harry C. Westover, United States District Judge.

Approved as to form and content:

W. Glenn Harmon, William H. Henderson, By. William H. Henderson, Attorneys for Plaintiff.

[fol. 1359]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 H W

CASE-SWAYNE CO., INC., Plaintiff,

vs.

SUNKIST GROWERS, INC., Defendant.

PRETRIAL ORDER No. Two—Lodged May 26, 1964 and Filed May 27, 1964

On Monday, May 18, 1964, at 2:00 o'clock p.m. in Courtroom No. 5 in the United States Post Office and Courthouse,

[File endorsement omitted]

Los Angeles, California, counsel for the parties in the above-entitled action met with the Honorable Harry C. Westover, United States District Judge, to discuss the issues to be submitted to the jury in said case. After discussion with counsel, and good cause therefor appearing, the Court now makes the following orders to constitute Pretrial Order No. Two in the within cause:

1. The issues in this case are limited to the following questions:

(a) Did Sunkist have a monopoly of product oranges grown in the California-Arizona area?

(b) Did Sunkist illegally use any such monopoly power [fol. 1360] which it may have possessed?

(c) Did Sunkist attempt to monopolize product oranges grown in the California-Arizona area?

(d) What damages, if any, did the plaintiff suffer by reason of any violations of law proved under issues (a) and (b), or (c) above?

2. The defendant is ordered to serve and file a statement of its theory of the case by June 8, 1964.

3. Paragraphs 6 and 7 of Pretrial Order No. 1 previously signed in this case are hereby modified as follows: the plaintiff shall serve and file its opening statement to the jury by June 29, 1964. The defendant shall serve and file its opening statement to the jury by July 6, 1964. Both parties shall serve and file their proposed jury instructions, accompanied by citations of authority with each instruction, on or before July 20, 1964.

4. Trial on the issue of damages will commence, if necessary, immediately upon the conclusion of the trial of the issue of liability.

5. Pursuant to the stipulation entered into in open court, the defendant will notify plaintiff on or before May 25, 1964, which of the interrogatories propounded by defen-

dant by document dated May 4, 1964, will be withdrawn. Plaintiff's time to answer, object or otherwise move with respect to said interrogatories shall date from service of such designation of interrogatories withdrawn.

6. Counsel for both parties are directed to proceed with efforts to stipulate to as many facts as are possible. In this connection, the defendant has agreed to stipulate to the percentage of oranges marketed by Sunkist in each market year as disclosed by the records of the U.S. Department of Agriculture.

Dated: May 27th, 1964.

Harry C. Westover, United States District Judge.

[fol. 1790]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 WB

CASE-SWAYNE CO., INC., Plaintiff,

v.

SUNKIST GROWERS, INC., Defendant.

STIPULATION OF RELEVANT FACTS AND MATERIAL ISSUES OF LAW RELATIVE TO ISSUE RAISED BY CAPPER-VOLSTEAD DEFENSE—Lodged October 23, 1964 and Filed October 27, 1964

By its answer to the complaint, defendant has asserted that it—and former defendants Exchange Lemon Products

[File endorsement omitted]

Company and The Exchange Orange Products Company during their corporate existences—is, and they were, duly qualified under Section 1 of the Capper-Volstead Act and [fol. 1791] entitled to the protection thereof. Based upon said claimed factual qualification, defendant has asserted a claimed defense to the charges or certain of the charges alleged in the complaint. Because the said issue of qualification under Section 1 of the Capper-Volstead Act, whether sustained or defeated, will materially affect the trial presentation by both plaintiff and defendant, it is the desire of the parties to obtain a determination by the Court of said issue on appropriate motion and ruling prior to trial.

To that end, the parties hereto have entered into this stipulation of the facts deemed by each to support its legal theory. In order to frame the legal issue as the same has been defined by counsel it was necessary to adopt, solely for purposes of this stipulation, certain estimates, approximations and generalizations as to which detailed information was not readily available or easily calculated. Accordingly, the facts herein stipulated to shall be deemed admitted and agreed upon for purposes of the determination of said issue in this action, but shall not be deemed admissions or statements of fact by the parties or either of them for any other purpose or purposes.

Pursuant to the foregoing qualifications and for the purpose stated, the parties hereto, by and through their respective counsel, hereby stipulate that the following may be taken as and deemed to be admitted and true:

Stipulations of Fact

1. *Definition of Terms.* As used in this stipulation, the following terms shall have the meaning indicated in this paragraph:

(a) "Sunkist"—Sunkist Growers, Inc.

(b) "Exchange Orange"—The Exchange Orange Products Company.

(c) "Exchange Lemon"—Exchange Lemon Products [fol. 1792] Company.

(d) "1955 Agreement"—refers to the 1955 Sunkist-District Exchange Association Agreement, a copy of which is attached hereto as Exhibit "A".

(e) "District Exchange"—refers to the intermediate cooperative marketing agencies which are signatories to the 1955 Agreement.

(f) "Association"—refers to citrus packing houses which are signatories to the 1955 Agreement, which in turn are classified into three major groups:

(1) Cooperative Associations

(2) Corporate Growers

(3) Agency Associations.

(g) "Sunkist System"—refers collectively to the Associations and the growers shipping citrus fruit through them, the District Exchanges, Sunkist, Exchange Orange and Exchange Lemon.

2. *Cooperative Associations.* The Cooperative Associations constitute 80.12% by number, and 82.34% by volume of fruit handled of all Associations in the Sunkist System. Such Associations are composed of growers who have joined together to market their fruit cooperatively, and for that purpose have acquired packing house facilities. All of the members of such Associations are fruit growers. Each such grower markets through the Association only the fruit which he produces. None of such Associations deals in the products of non-members in an amount greater in value than such as are handled by it for its members. In the aggregate, the non-member business of such Associations does not exceed ten percent (10%) of the value of all products marketed for members. None of said Cooperative Associations has ever paid dividends on its stock or

membership capital in excess of 8% per annum. Some [fol. 1793] members of such Cooperative Associations are private corporations, which grow fruit, and which do not qualify as, nor do they claim to be, cooperative associations under Section 1 of the Capper-Volstead Act.

3. *Corporate Growers.* Associations which are Corporate Growers constitute 4.97% by number, and 4.72% by volume of all Associations in the Sunkist System. Such Associations are corporations which themselves grow citrus and whose total volume is sufficient to justify the installation of packing house facilities. Such Corporate Growers do not qualify as, nor are they claimed to be, cooperative associations under Section 1 of the Capper-Volstead Act. Such corporations market for their own account only the fruit which they produce and do not deal in the products of others in an amount greater in value than the quantity of products handled for themselves. All products handled for others by such Corporate Growers are handled on an agency basis comparable to that of the Agency Associations.

4. *Agency Associations.* Agency Associations constitute 14.91% by number, and 12.94% by volume, of all Associations in the Sunkist System. The Agency Association is normally a private corporation which owns and operates packing house facilities. Some "Agency Associations" are individually owned enterprises and partnerships. Its stockholders may or may not be growers who ship fruit through the packing house owned by the corporation. That is, some have been fruit growers, and some have not been fruit growers. Where such is the case, the fruit of such stockholders is handled on a uniform basis with fruit of non-stockholders. Such Agency Associations do not qualify as, nor do they claim to be, cooperative associations under Section 1 of the Capper-Volstead Act. The packing house facilities of the Agency Association are made available to producers on the basis of the fruit being packed for market

at cost plus a fixed fee. The Agency Association does not itself participate in either the gain or loss involved in [fol. 1794] marketing fruit through Sunkist beyond the recovery of its costs and fixed fee for packing. Such Agency Association furnishes its facilities and services on an independent contract basis, wholly unrelated to the net returns from the sale of the product handled. A contract between such an Agency Association and its growers which may be deemed as typical of such Associations is attached hereto as Exhibit "B".

5. *District Exchanges.* The District Exchanges are all membership corporations whose membership consists of Associations from one or more of the three categories, to wit: Cooperative Association, Corporate Growers, and Agency Associations. None of the District Exchanges has ever paid dividends on its stock or membership capital in excess of 8% per annum. The District Exchange is not directly involved in the processing or marketing of fruit diverted to products utilization.

6. *Sunkist.* Sunkist is a membership corporation whose members prior to October 31, 1958, were individuals appointed by and representing each of the District Exchanges, on the basis of one member for each District Exchange. Such individual members have normally been growers, but some have not been. The amount of fruit marketed by such individuals through their local Associations, and thus through the Sunkist System, does not exceed 10% of the total fruit marketed by Sunkist. A copy of the Articles of Incorporation and By-laws of Sunkist which were effective during the period covered by this stipulation is attached hereto as Exhibit "C". A copy of a typical membership certificate issued during said period is attached as Exhibit "D". Sunkist has never paid dividends on stock or membership capital in excess of 8% per annum.

7. *Exchange Orange.* Exchange Orange was organized as a capital stock corporation under the general laws of

California. A copy of its Articles of Incorporation and its [fol. 1795] By-laws are attached as Exhibit "E". Exchange Orange was during the period covered by this stipulation a wholly owned subsidiary of Sunkist, engaged in the processing and marketing of products oranges and grapefruit and the products produced therefrom. Exchange Orange has never paid dividends on its stock or membership capital in excess of 8% per annum. Exchange Orange and Exchange Lemon were engaged in producing a full line of citrus products. A description of the orange and grapefruit products is set out in the exhibit attached to Sunkist's answer to Interrogatory No. 2. (Identified in the pleadings as S-2-A-1 to S-2-A-25, and by this reference incorporated herein.) These products include juice products, such as single strength and concentrated juices, and peel products, including citrus oil, pectin, pharmaceuticals, cow feed, etc. All products so produced by Exchange Orange and Exchange Lemon were primarily citrus products, i.e., no products were produced in which a citrus derivative was a mere incidental ingredient.

8. *Exchange Lemon.* Exchange Lemon is a membership corporation whose members are the Associations who handle lemons; it is engaged in processing and marketing products lemons and the products produced therefrom. Exchange Lemon has never paid dividends on its stock or membership capital in excess of 8% per annum. The member Associations of Exchange Lemon include Cooperative Associations, Corporate Growers, and Agency Associations, as said associations are defined and described hereinabove.

9. *Sunkist System—History and Functional Development.* For purposes of describing the organization and functional development of the Sunkist System, the following brief history is set forth:

The California citrus industry dates its first major commercial development to the completion of the Southern

Pacific line to Southern California in 1876. By 1885, Santa [fol. 1796] Fe had added its trackage and the Eastern markets were open.

The earliest shipments of oranges to the East in the 1870's were made by growers on an individual basis. Later, groups of neighboring growers joined together cooperatively to pool their fruit for purposes of sale. These informal groups had by 1892 begun to form into cooperative corporations.

In order to effectively market fresh citrus fruit in the major Eastern markets, it was necessary to have facilities where the fruit could be sorted, graded, washed, packed and shipped by rail. The earliest packing houses were commercial ventures. In their formative stages, the cooperative associations arranged to have their fruit packed by such packers under contract. The first cooperatively owned packing house facilities were acquired in the early 1890's. The concept of cooperative ownership of packing house facilities by the growers shipping through such facilities spread rapidly throughout the California citrus industry in the 1890's.

Early sales of oranges by pioneer growers in the 1880's had been to fruit buyers on an "on tree" basis. The local buyers soon sought to have the grower share the risks of the return on his fruit. Those risks were enhanced by the lack of understanding by buyers of the flow of fruit to the Eastern market—with the resulting glut of some markets and shortage in others.

The sales in the East, meantime, were being made by commission merchants interested primarily in volume and their consequent commissions, not in returns to the growers. After the disastrous marketing season of 1884-85, growers in the infant industry joined to form The Orange Growers Protective Union of Southern California, which for several years in the late 1880's succeeded in placing representatives in the Eastern markets thereby achieving more intelligent distribution of the crop and avoidance of glut. Despite

this early beginning at cooperative marketing, the Union [fol. 1797] succumbed to the persistent opposition of commission men and buyers who were able to make larger profits dealing with growers individually.

After the failure of this and other early attempts at organizing grower marketing, there occurred a series of meetings in 1893 at which the cooperative technique of pooling fruit at the packing house level was explained. Out of these discussions came a plan for creation of informal Boards of Exchange in each producing district. These Boards were to be composed of representatives of each local association within the district. Uniform grades and brands were to be developed by each Board of Exchange for its district. The managers of each association in the district were to meet daily at the office of the district to transact the business of selling their growers' fruit.

The district Boards of Exchange in turn selected representatives on the Executive Board of the Southern California Fruit Exchanges. The Executive Board then had the duty of regulating and prorating sales from the several districts.

The concept of cooperative marketing through grower owned associations was enthusiastically adopted in 1893 and 1894. The informal district Boards of Exchange were incorporated as cooperative corporations by their member associations and were thereafter known as "District Exchanges".

In 1895 the Executive Board was incorporated as Southern California Fruit Exchange. In recognition of the development of cooperative marketing in Central California, as evidenced by formation in 1901 of the Tulare County Citrus Fruit Exchange, Southern California Fruit Exchange was dissolved in 1905 and its functions were succeeded to by the newly-formed California Fruit Growers Exchange, which changed its name in 1952 to Sunkist Growers, Inc.

At the outset, Sunkist was entirely a sales department. That remains its primary function. But as an adjunct to

[fol. 1798] its selling function, Sunkist developed many departmental activities of common value to its growers.

During the first two decades of the century, most of the departmental organization of Sunkist had its beginning. An early committee on claims preceded the development of a claims department of Sunkist in 1904. By 1910 this had developed into a Traffic Department, handling traffic claims and related problems for all Associations and District Exchanges affiliated with the Sunkist System.

Work in the field was of great importance. This included encouraging the institution of radical changes in the methods of handling fruit to implement the results of the decay investigation conducted by the U. S. Department of Agriculture in 1904. Research of all types was soon undertaken by Sunkist.

A field organization department was set up to help improve methods of organizing and operating District Exchanges and Associations.

Commencing in 1907, Sunkist developed an advertising program to promote sales of its growers' fruit. The "SUNKIST" trademark was adopted in that same year and has been used continuously since then by Sunkist on the highest quality citrus fruit. In the wake of advertising, came the patent and trademark division.

Among other vital departments to develop in Sunkist was the Research Department, covering all forms of research from methods of handling and preserving fresh fruit to development of citrus products.

By 1915 there existed a substantial surplus production of lemons over and above the quantity which could be sold in the form of fresh fruit. Rather than destroy this surplus fruit, some of the packing houses shipping lemons through the Sunkist System joined together to organize Exchange By-products Company—which later changed its name to Exchange Lemon Products Company. This cor- [fol. 1799] poration was a cooperative endeavor by those associations which formed it. In later years all packing

houses shipping lemons through the Sunkist System joined Exchange Lemon.

In 1918 some of the packing houses shipping oranges through the Sunkist System formed a similar corporation (named Exchange Orange Products Company) for purposes of handling surplus oranges. After an early disastrous experience in the marmalade business during the runaway sugar prices in World War I, that corporation was dissolved. A new corporation of a similar purpose and ownership was formed in 1920 under the name The Exchange Orange Products Company. In 1931, all of its stock was acquired in the name of Sunkist to assure the availability of its processing facilities to all Associations shipping oranges through the Sunkist System, as well as those Associations which had theretofore owned stock.

Thus, by 1920 the corporate and functional pattern of the Sunkist System was established as it remained until October 31, 1958, when Exchange Lemon Products Company and The Exchange Orange Products Company were merged into Sunkist and thereby became the Lemon Products Division and the Orange Products Division, respectively.

With regard to the physical handling of fruit, the grower cares for the trees and brings the citrus fruit to the point where it is ready to be picked. The packing house association then normally sends its specialized crews into the groves to pick the fruit. When the fruit is brought to the packing house, it is washed and graded. The fruit graded as products fruit is then diverted to a separate, so-called, juice fruit bin. The remaining marketable fruit is then either packed or put up as loose fruit awaiting sale on the fresh fruit market. When a sale in fresh fruit channels has been arranged, the fruit is shipped to the customer on a delivered price basis, or placed aboard the train or truck [fol. 1800] in the case of F.O.B. sales, or shipped to the selected auction or public sale markets. A limited amount of fresh fruit is also sold in the producing area on a negotiated sale basis in which case it is picked up at the packing house by the Buyer's trucker.

When the decision was made for any reason to divert fruit to products utilization (as distinguished from sale in fresh fruit channels) the Exchange Lemon or Exchange Orange was notified* and their trucks picked up the fruit for transportation to the appropriate processing plant. In those instances where the Exchange Orange or Exchange Lemon sold a portion of the fruit diverted to it to processors not affiliated with the Sunkist System, that fruit was normally picked up by the processor direct at the packing house on authorization from the Products Company involved.

Neither the District Exchanges nor Sunkist had facilities for physically handling the fruit.** The actual handling of the fruit throughout the marketing operation is by the packing house Association, in the facilities of the appropriate Products Company, or in the hands of public carriers and the operators of public auctions.

Each District Exchange is organized and operated to meet the peculiar local needs of its member packing house Associations. In the job of marketing the fruit of its member Associations, the District Exchange generally is in communication, through representatives furnished by Sunkist, with customers in the major markets throughout the United States. District Exchange personnel possess specialized sales knowledge applicable to the fruit produced in the area served by the particular District Exchange. [fol. 1801] They negotiate and confirm sales for their member packing houses and arrange for the physical shipment of fruit to market, The District Exchange is not directly involved in the processing or marketing of fruit diverted to products utilization.

Apart from its specialized marketing function, the District Exchange is one of the conduits of communication and

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* With the exception of Arizona grapefruit and Yuma oranges, which are handled locally.

** With the possible exception of the Tempe, Arizona, plant which may have been operated by the Arizona Citrus Exchange since November 1, 1957.

representation between the local packing house Association and Sunkist. From an accounting standpoint, the District Exchange acts as a conduit through which payment of proceeds from the sale of fresh fruit and products oranges and grapefruit is made to its affiliated local Associations and assessments on fresh fruit for operating funds and revolving fund capital are collected.

From an accounting standpoint, all members of the Sunkist System beyond the grower (with the exception of the Agency Associations as hereafter noted) operate on a strict cost basis, remitting to the grower, through the channels of the System, all marketing proceeds in excess of reimbursement of actual costs, and deductions or assessments for maintenance of authorized reserves or grower capital. The Agency Associations return to their growers all of the proceeds of marketing over their actual cost plus the fixed fee per box.

The District Exchanges, Sunkist, Exchange Orange and Exchange Lemon market or process and market no citrus fruit other than that coming into the Sunkist System through the Associations.

All products produced by Exchange Orange or Exchange Lemon were marketed by Sunkist in its name.

[fol. 1802]

Issues of Law

I. Was Sunkist qualified under Section 1 of the Capper-Volstead Act? (In determining this issue, what weight, if any, should be given to the administrative determinations of the Treasury Department and the Berkeley Bank for Cooperatives, reviewed in the points and authorities to be filed herein.)

II. Was Exchange Orange qualified under Section 1 of the Capper-Volstead Act?

III. Was Exchange Lemon qualified under Section 1 of the Capper-Volstead Act?

IV. Assuming Capper-Volstead qualifications, can there be an illegal conspiracy in violation of the Sherman Act, solely as among Sunkist, Exchange Orange, and Exchange Lemon, or any two of them?

V. Did the manufacturing activities of Exchange Orange and Exchange Lemon exceed the authorized activity of "collectively processing, preparing for market, handling, and marketing" the by-product citrus fruit of the growers affiliated with the Sunkist System.

Related Issues of Fact and Law

Nothing in the foregoing stipulation of fact and statement of issues of law shall be deemed to limit proof or otherwise remove from this action other issues pertaining to Capper-Volstead, such as the following:

(a) *Conspiracy With Non-qualified Persons.* The complaint claims a conspiracy with certain corporations which are not claimed by defendants to be qualified under Section 1 of the Capper-Volstead Act. [fol. 1803] Plaintiff also asserted that defendant Sunkist, Exchange Orange and Exchange Lemon are not so qualified. It is recognized by the parties that qualification under Section 1 of the Capper-Volstead Act does not afford any protection against liability for a conspiracy with non-qualified persons or corporations in violation of the Sherman Act. Accordingly, the factual issue relative to the existence of such a claimed conspiracy with non-qualified persons remains to be tried.

(b) *Extent of Capper-Volstead Exemption.* The parties recognize that qualification under Section 1 of the Capper-Volstead Act does not afford any protection against liability for monopoly or attempt to monopolize where such monopoly or attempt to monopolize is accompanied by predatory practices. The parties disagree, as a matter of fact and law, as to whether

any "predatory practices" have taken place. Accordingly, the legal and factual issue relative to the existence of such predatory practices remains to be tried.

The parties disagree regarding the effect of qualification under Section 1 of the Capper-Volstead Act, where there is no conspiracy with non-qualified persons or organizations, and where there are no predatory practices. The plaintiff contends that under these circumstances, the defendant may still be liable for violation of Section 2 of the Sherman Act; the defendant contends that qualification under these circumstances grants immunity. This issue of law remains to be determined.

(c) *Undue Enhancement of Price.* The complaint charges and the answer denies undue enhancement of prices of by-product citrus fruit, substantially in the [fol. 1804] terms of Section 2 of the Capper-Volstead Act. The legal effect of this issue remains to be determined, and the factual issue as to whether or not an undue enhancement occurred remains to be tried.

On the Basis of the Foregoing stipulation of facts and issues of law, the parties respectfully ask leave of the Court to file concurrent briefs of the controlling law and facts on or before May 24, 1961, and concurrent reply briefs on or before June 26, 1961; whereupon the parties pray that the Court set the matter for argument and determine the issues herein set forth prior to trial.

Dated: April 10, 1961.

By William H. Henderson, Attorney for Plaintiff.

February 1, 1961.

By Donald D. Stark, Attorney for Defendant.

It Is So Ordered.

Dated: February ....., 1961.

.....

Judge

[fol. 1805]

EXHIBIT A TO STIPULATION

Executed Copy for
Sunkist Growers, Inc.

1955

SUNKIST

DISTRICT EXCHANGE

ASSOCIATION

AGREEMENT

This copy executed by:
SUNKIST GROWERS, INC.

.....
(District Exchange)

.....
(Association)

Effective date: ....., 19....

[fol. 1806]

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[fol. 1807]

1955

SUNKIST-DISTRICT EXCHANGE-ASSOCIATION AGREEMENT

THIS AGREEMENT, made on the date subscribed hereto, between SUNKIST GROWERS, INC., a California non-profit cooperative marketing association (herein called "Sunkist"), certain non-profit cooperative marketing associations affiliated with Sunkist which execute this agreement (herein collectively called "District Exchanges" and individually called "District Exchange"), and certain nonprofit cooperative associations and others affiliated with Sunkist through District Exchanges which execute this agreement (herein collectively called "Associations" and individually called "Association"),

WITNESSETH:

WHEREAS, it has been deemed desirable by the parties hereto to cooperate in the matter of developing the citrus industry and marketing its fruits and products and to associate themselves together for any and all of the purposes permitted by law for nonprofit cooperative marketing associations;

THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and for other valuable consideration,

THE PARTIES HERETO AGREE AS FOLLOWS:

1. Short Title

This agreement may be referred to as "1955 Sunkist-District Exchange-Association Agreement."

2. Description of Parties

SUNKIST GROWERS, INC. is a nonprofit marketing association organized and existing under the laws of the State of California. It is herein called "SUNKIST".

DISTRICT EXCHANGES are nonprofit cooperative marketing associations, parties to this agreement, marketing the fruit of their affiliated associations through the facilities provided by Sunkist. They are herein collectively called "DISTRICT EXCHANGES" and individually "DISTRICT EXCHANGE".

ASSOCIATIONS are certain nonprofit cooperative associations, corporations, partnerships and individuals, parties to this agreement, each of which is affiliated with one of the District Exchanges and through it with Sunkist, which harvest and/or receive and prepare for market their own fruit or the fruit of their growers and deliver the same for marketing under this agreement. They are herein collectively called "ASSOCIATIONS" and individually "ASSOCIATION".

[fol. 1808] 3. Definitions of Terms

As used in this agreement the following terms have the following meanings:

FRUIT means the citrus fruit of every size, grade and quality, including culls, under the control of the parties to this agreement.

Box means an amount of the particular fruit involved which is contained in the standard packed box in common use as determined from time to time by the board of directors of Sunkist.

TO MARKET OR MARKETING means sale or shipment for purposes of sale as fresh fruit, utilization for products, or other disposition.

CONTROL OF FRUIT. Fruit shall be deemed to be under the control of an Association when covered by an agreement or harvested for and/or received by the Association.

GROWER is an individual, a partnership, a corporation, or any other entity whose fruit is handled as provided in the paragraph defining control of fruit.

4. Purpose of Agreement

This agreement is entered into for the purpose of carrying out the aims and purposes of Associations and their members and of District Exchanges in connection with the marketing of their fruit, and to continue the cooperative marketing system generally referred to as Sunkist Growers, Inc. To effect said purposes, the parties hereto desire to maintain instrumentalities to act for said parties in maintaining, extending and making more efficient the marketing of said fruit.

All parties to this agreement recognize that the strength of the organization and its effectiveness are largely dependent upon complete conformance to the provisions and principles of the contract by all parties. This is in effect a mutual agreement on the part of all to work for the common good of all.

5. Effective Date and Term of Agreement

This agreement shall become effective on September 1, 1955 as to all parties executing the same on or before said date, and shall be effective as to other parties when executed by them as hereinafter provided. It shall continue in effect until terminated as hereinafter provided, but in no event for a longer period of time than is now or may hereafter be permitted by law.

6. Agreement to Market Fruit

Each Association agrees to market hereunder all of the citrus fruit subject to its control through the District Exchange with which it is affiliated.

Each District Exchange agrees to market hereunder through Sunkist all of the citrus fruit subject to its control.

Sunkist agrees to market all of said fruit.

7. Sunkist as Agent

Each District Exchange and Association hereby designates Sunkist as its agent and agent of its growers in all

matters concerning the marketing of fruit and products hereunder and in all matters deemed by Sunkist to be for the general good of the parties hereto. Subject to the terms and conditions of this agreement, full power and authority is hereby conferred upon Sunkist as such agent to conduct said activities in such manner as it in its sole discretion determines is for the best interests collectively of the District Exchanges and Associations, parties hereto.
[fol. 1809] District Exchanges and Associations authorize Sunkist to carry on said activities through such officers, agents and employees and such departments or other facilities as the board of directors of Sunkist may from time to time determine.

8. Power Conferred on Sunkist by Legislative Acts

District Exchanges and Associations agree that Sunkist shall have and in its discretion may exercise on an equitable basis on behalf of District Exchanges and Associations any and all powers relating to the marketing of fruit hereunder that Sunkist, District Exchanges and Associations are or may be hereafter authorized by legislative act or by order or regulations based thereon to exercise. Any Association or District Exchange may as to it at any time and from time to time (by resolution of its board of directors, if a corporation) terminate the authority conferred upon Sunkist by this section or again give such authority to Sunkist. Sunkist shall be notified immediately in writing of any such termination of said authority, and unless so notified Sunkist may exercise any of the powers referred to in this section.

9. Reserved Rights

Each Association reserves to itself the right to determine to what market it shall ship, where its fruit shall be sold, and, except at auction points, the price it is willing to receive.

Each Association hereby delegates said reserved right to the District Exchange with which it is affiliated; provided, however, that any Association may at any time and from time to time (by resolution of its board of directors, if a corporation) terminate such delegation and itself exercise said reserved right for such period of time as to it may seem proper, or redelegate said reserved right to such District Exchange.

10. Rights Conferred on Sunkist

In order properly to supply the market, District Exchanges and Associations authorize Sunkist by a majority vote of its board of directors to determine the maximum amount of fruit to be marketed currently and to allocate the opportunity to ship equitably among Associations; provided, however, that said majority includes directors representing eighty-five percent (85%) by volume of shipments as determined by the board of directors of the species or variety under consideration. Said parties agree not to exceed said allocation.

11. Charges and Expenses

(a) Of Sunkist

All charges and expenses of Sunkist, including deductions for such reasonable reserves as may from time to time be prescribed by the board of directors of Sunkist and including a subscription to "The California Citrograph", shall be met by assessments upon District Exchanges and upon any Association which may be marketing directly through Sunkist pursuant to this agreement. The method, amount, manner and time of assessment shall be fixed and determined from time to time by the board of directors of Sunkist.

Each District Exchange agrees to pay to Sunkist when due the amount of any assessments hereunder and authorizes Sunkist to deduct from the proceeds of sale of fruit

[fol. 1810] marketed for it hereunder the amount of any such assessment and any other amounts due Sunkist from District Exchange or from any Association affiliated with it.

(b) Of District Exchanges

All charges and expenses of District Exchanges, including Sunkist assessments and deductions for such reasonable reserves as may from time to time be prescribed by their respective boards of directors, shall be met by assessments upon Associations. The method, amount, manner and time of assessment shall be fixed and determined from time to time by the board of directors of each District Exchange.

Each Association agrees to pay to the District Exchange with which it is affiliated when due the amount of any assessments hereunder and authorizes Sunkist or District Exchange to deduct from the proceeds of sale of fruit marketed hereunder the amount of any such assessment and any other amounts due District Exchange or Sunkist from Association.

12. Losses

The only losses in connection with the sale of fruit or otherwise under this agreement for which Sunkist shall be responsible to District Exchanges or Associations are losses arising from the financial failure or default of purchasers after having positively accepted the fruit, which default is not due to complaint of the buyer concerning the quality, condition or grade of the fruit. Such losses shall be paid by assessments upon fruit marketed through Sunkist in the method, amount and manner determined by the board of directors of Sunkist.

13. Customers' Claims

In case of any controversies with customers wherein in the judgment of the board of directors of Sunkist the col-

lective interest of Sunkist shippers is involved, the judgment of said board of directors as to settlement of such dispute shall be final and binding upon the Association which furnished the fruit.

14. Pooling of Fruit

(a) Pooling in General

Pools may be established by the board of directors of Sunkist for the handling, marketing or disposal of any one or more species or varieties of fruit, or fruit produced in or destined for any particular geographical section, or fruit conforming or not conforming to specified standards of quality and/or size. Except in the case of those types of pools mentioned in subsection (b) hereof, the inclusion of fruit in such pools shall not be mandatory, but each Association shall have the right to determine whether it shall participate in such pools.

The conditions of eligibility of fruit for such pools, the methods of operating the same and all rules and regulations in connection with such pools shall be prescribed by the board of directors of Sunkist.

In the event such pool or pools shall thus be established, the rights reserved elsewhere in this agreement to Associa- [fol. 1811] tions to determine to what markets they shall ship, where their fruit shall be sold and, except at auction points, the price they are willing to receive shall be exercised solely by Sunkist as to all fruit included in said pool or pools.

(b) Pooling of Fruit Intended for Export or for Use Other Than as Fresh Fruit

Pools may be established as hereinafter provided for the handling, marketing or disposal of fruit intended for export or for Government use or for use other than as fresh fruit.

A pool established under this subsection (b) may include all fruit falling within one of these classifications or may

be limited to such fruit produced in or destined for any particular geographical section. A pool under this subsection (b) must be established by a majority vote of the board of directors of Sunkist; provided, however, that said majority includes directors representing seventy-five percent (75%) by volume of shipments as determined by the board of directors of the species or variety or varieties in the district under consideration.

The conditions of eligibility of fruit for such pools, the methods of operating the same and all rules and regulations in connection with such pools shall be prescribed by the board of directors of Sunkist.

Notwithstanding any other provision of this agreement, the inclusion of fruit in such pool or pools when thus established shall be mandatory and the rights reserved elsewhere in this agreement to Associations to determine to what markets they shall ship, where their fruit shall be sold and, except at auction points, the price they are willing to receive shall be exercised solely by Sunkist as to all fruit included in said pool or pools.

15. Routing of Shipments and Determining Transportation Facility

Sunkist shall have authority to specify the route of all shipments of fruit. Any Association may at any time and from time to time (by resolution of its board of directors, if a corporation) terminate such authority as to it or again give Sunkist such authority. Sunkist shall be notified immediately in writing through the District Exchange with which such Association is affiliated of any such termination of such authority, and unless so notified Sunkist may exercise the same.

Sunkist shall have authority by the vote of three-fourths (¾) of the entire number of its board of directors to determine the transportation facility—whether by rail, by water or otherwise.

16. Pooling of Transportation Expenses

Transportation costs, including but not restricted to costs of refrigeration and other protective services, incurred in connection with the movement of fruit destined for points outside the state of origin and of fruit intended for use other than as fresh fruit destined for points either within or without the state of origin, may in the manner and to the extent determined by a three-fourths (¾) vote of the entire [fol. 1812] number of the board of directors of Sunkist be pooled equitably in relation to the different types of refrigeration and other protective services and paid by charges or assessments levied and apportioned as the board of directors of Sunkist may determine.

17. Methods of Marketing

All fruit must be marketed through the facilities provided by Sunkist. The board of directors of Sunkist shall determine the methods of marketing to be adopted in any or all markets and the types of containers and method of packaging to be used.

18. Establishment and Use of Grades

Sunkist shall have authority to establish grades for fruit and products, and to establish and from time to time change rules and regulations pertaining thereto, and to prescribe the standards of quality of fruit and products to be marketed under such grades, and to permit Associations to market their fruit under such grades upon compliance with such prescribed standards and with all rules and regulations established by Sunkist pursuant hereto.

19. Establishment and Use of Trade-marks, etc.

Sunkist shall have authority to acquire, own and use one or more trade-marks, trade names, brands, patents and copyrights and to prescribe all rules and regulations in connection with the use thereof, which may be changed from time to time in the sole discretion of Sunkist.

20. Contact with Buyers

District Exchanges and Associations shall not solicit business from the trade or employ any solicitor or agent, or correspond or communicate with any buyer for the purpose of promoting the sale of their fruit. District Exchanges and Associations further agree that all prices, quotations and allowances shall be issued and distributed solely by Sunkist. Copies of correspondence with district managers in the markets by any District Exchange must be sent to Sunkist; and by any Association, to Sunkist and to the District Exchange with which it is affiliated.

21. Warranty

Each Association warrants to the District Exchange with which it is affiliated and each District Exchange and Association warrants to Sunkist that it has the right to receive, pack and deliver for marketing and to market through Sunkist all of the fruit which it may deliver under this agreement. Each of said parties further warrants that said fruit and the disposition thereof shall comply with all state and federal statutes and regulations applicable thereto.

22. Indemnity

District Exchange and Association severally agree to indemnify and save harmless Sunkist against all loss, damage, [fol. 1813] injury, liability, cost and/or expense of whatsoever nature suffered or to be suffered by Sunkist by reason of any claim or claims asserted or made to or against Sunkist or any of its agents, customers, vendees or anyone to whom any such fruit or product is delivered, or by whom the same is handled, and/or by reason of Sunkist's agreement to defend or its defense of any action at law or any suit in equity brought or to be brought against Sunkist, or any customer or vendee of Sunkist, or anyone to whom any such fruit or product is delivered, or by the same is

handled, specifically including but not restricted to any and all claims asserted by anyone by reason of District Exchange's or Association's having made use of any patented device or machinery or process in infringement of letters patent, or having produced any patented product or products whatsoever in infringement of letters patent, or having used in connection with such fruit or products any label, trade-mark or copyright in infringement of the rights of others, or constituting unfair competition or growing out of or connected with the receipt, distribution or marketing of such fruit or products by Sunkist.

23. Agreements of Associations With Growers

Each Association agrees that it will at all times maintain in force appropriate agreements between itself and its growers which will provide for the delivery to Association of all of the fruit covered by such agreements. Each Association agrees to furnish, upon request, to Sunkist and/or to District Exchange a list of growers then affiliated with said Association and a copy of its agreement with growers.

Each Association agrees not to release any of its growers from such grower agreement (except upon termination of the same by giving of appropriate notice of termination under the terms of said agreement during the regular withdrawal period) without giving to Sunkist and to the District Exchange with which such Association is affiliated ten days' notice of such proposed release. At any time within the varietal season that such releases individually or collectively shall total more than five (5) percent of the volume of the Association by variety, any further releases must be approved by the District Exchange with which said Association is affiliated.

24. Exchange Lemon Products Company

Associations handling lemons agree to execute the Exchange Lemon Products Company Membership Contract.

25. Direct Marketing by Associations

Where District Exchange affiliation is not available or is impracticable, and when deemed necessary by the board of directors of Sunkist in its sole discretion, Associations may market directly through Sunkist on such terms and conditions as said board of directors shall prescribe.

26. Remedies

Each District Exchange and Association understands and agrees that the execution of this agreement by it and like agreements by other District Exchanges and Associations [fol. 1814] creates for all and makes available to all the cooperative marketing system generally known as Sunkist Growers, Inc.; that the operation of said cooperative marketing system and the equitable distribution among all District Exchanges and Associations of its benefits and its burdens require the strict performance by each District Exchange and Association of this agreement; that by reason of the foregoing and of the preparation made by all parts of said cooperative marketing system to receive, handle and market fruit hereunder, and for other reasons, it is and would be impracticable or extremely difficult to fix the actual damage to Sunkist if the District Exchanges or Associations or any one of them should fail to deliver all of said fruit in accordance with the terms of this agreement.

In view of the foregoing, each District Exchange agrees to pay to Sunkist as liquidated damages for all fruit withheld, delivered, sold, consigned, marketed or otherwise disposed of by or for such District Exchange other than in accordance with the terms hereof, and each Association agrees to pay to Sunkist as liquidated damages for all fruit withheld, delivered, sold, consigned, marketed or otherwise disposed of by or for such Association other than in accordance with the terms hereof, the sum of fifty cents (50c) per box. In the event of any such violation of this agreement, Sunkist shall be entitled to recover liquidated dam-

ages from either District Exchange or Association but not from both as to the same transaction.

All of the parties hereto agree that the successful operation of this agreement requires that each District Exchange and Association observe and conform to all of the provisions hereof. Each of the parties hereto agrees that in the event of a breach or threatened breach by it of any of the provisions hereof regarding delivery of fruit each of the other parties hereto shall be entitled to an injunction to prevent breach or further breach hereof and to a decree of specific performance hereof.

If Sunkist brings and successfully maintains any action whatever by reason of a breach or threatened breach hereof or otherwise against a District Exchange or Association, said District Exchange or Association agrees to pay to Sunkist all costs of court, premiums for bonds, expenses and fees arising out of or caused by the litigation and reasonable attorneys' fees expended or incurred by Sunkist in such proceedings. All such costs and expenses shall be included in any judgment obtained in any such action.

Sunkist is hereby authorized to exercise all of the remedies or any of them particularly provided for or to be provided for by the Agricultural Code or the Civil Code of California as well as any other remedies now or hereafter permitted by law, and said remedies shall be deemed cumulative and not exclusive.

27. Board of Representatives

(a) Powers, Membership and Organization

To aid in carrying out the provisions of this agreement, a board of representatives is hereby created which, when its authority is invoked as herein provided, shall have super- [fol. 1815] vision over all matters pertaining to the carrying out of the provisions of this agreement as advisory to the board of directors of Sunkist; provided, however, that its authority shall not be construed to extend to the determina-

tion of the maximum amount of fruit to be marketed currently or the allocation of the opportunity to ship under Section 10 hereof, or to the establishment or operation of pools under Section 14 hereof, or to any other matters in this agreement which are subject to approval by volume or percentage of fruit handled.

Said board of representatives shall consist of one representative of each District Exchange, such representative to hold office at the pleasure of such appointing District Exchange. Each District Exchange shall appoint one representative on said board of representatives and shall certify such appointment in writing to Sunkist, and such appointment shall take effect when so certified; provided, the organization and powers of said board shall not be affected by the failure of any District Exchange to make or certify its appointment of a representative.

Said board shall have a chairman and a secretary. The president of Sunkist shall be ex officio chairman of said board, but in case of his absence or failure for any reason to perform his duties as such chairman the board shall elect a chairman for the time being. The board shall elect its own secretary who shall keep a record of its proceedings.

(b) Meetings

A meeting of said board of representatives shall be held upon request by two or more members of the board of directors of Sunkist. Such request may be oral if made at any meeting of the board of directors but must be in writing and delivered to the then acting secretary of Sunkist if made at any other time. Upon such request, said secretary shall immediately call said meeting and give notice thereof as hereinafter provided within twenty-four (24) hours after the receipt of said request. Said meeting shall be held not less than seven (7) nor more than fourteen (14) days from the date of the request for said meeting. All meetings of said board of representatives shall be held at the principal office of Sunkist. Written notice of the time and place of

holding said meetings shall be given by depositing in the United States mail, postage fully prepaid, a registered letter containing a copy of such notice addressed to each member of the board of representatives in care of the District Exchange by which he was appointed.

Any action of the board of representatives which shall have the effect of modifying or rescinding action theretofore taken by the board of directors of Sunkist must be taken at a meeting of said board of representatives which was called within ten (10) days after such action of the board of directors. All acts done or performed pursuant to action of the board of directors of Sunkist taken prior to the request for said meeting of the board of representatives shall be valid.

(c) Voting

At all meetings of the board of representatives voting shall be upon a volume basis; that is, each representative shall be entitled to one vote for each box of fruit marketed [fol. 1816] in accordance with this agreement by the District Exchange which he represents during the preceding fiscal year of Sunkist. Votes representing a majority of the total amount of fruit marketed during the preceding fiscal year of Sunkist by all District Exchanges shall be necessary for any action by said board of representatives.

(d) Effect of Action

When said board of representatives has taken action upon any matter pertaining to the carrying out of any provision of this agreement, the secretary of the board of representatives shall forward a copy of the resolution embodying such action to the board of directors of Sunkist, certified to by him; whereupon the board of directors of Sunkist shall take notice of such action as instructions from said board of representatives and shall act accordingly, subject to the provisions of the second paragraph of subsection (b) of this Section 27.

28. Amendment of Agreement

Except as hereinafter provided, any provision of this agreement may be amended upon resolution of a majority of the entire board of directors of Sunkist ratified in writing by two-thirds (⅔) in number of the District Exchanges then parties hereto. Without the affirmative vote of a majority of the entire board of directors of Sunkist ratified in writing by ninety percent (90%) in number of the District Exchanges and by ninety percent (90%) in number of the Associations then parties hereto, no amendment shall be made of Section 9 hereof entitled "Reserved Rights", or of subsection (a) entitled "Pooling in General" of Section 14 hereof entitled "Pooling of Fruit", or of Section 27 hereof entitled "Board of Representatives", or of this Section 28 entitled "Amendment of Agreement". No amendment shall be made of any portion of this agreement which shall operate to deprive any party hereto of the right of annual withdrawal herefrom.

Any amendment made pursuant to this section shall become effective upon the delivery to Sunkist of such written ratification by the requisite number of District Exchanges and Associations, unless a subsequent effective date shall have been fixed by the board of directors in proposing the amendment.

All of the parties hereto shall be bound by any amendment so made whether or not they ratified the same.

29. Termination of Agreement

(a) By Association

Any Association may terminate this agreement as to it on the 31st day of October of any year by giving notice of such termination to the District Exchange with which it is affiliated and to Sunkist, at the time and in the manner provided in subsections (d) and (e) hereof.

(b) By District Exchange

(1) With Association

Any District Exchange may terminate this agreement as between it and any Association on the 31st day of October [fol. 1817] of any year giving written notice of such termination to such Association at the time and in the manner provided in subsections (d) and (e) hereof. District Exchange shall within two (2) days after the giving of any such notice of termination to an Association notify Sunkist by registered mail of the giving of such notice.

In the event of such termination by a District Exchange as to any Association, this agreement shall remain in full force and effect as between such Association and Sunkist. However, either of said remaining parties may terminate this agreement by giving notice of termination in the manner provided in subsection (e) hereof within ten (10) days after receipt by Association of notice of termination by District Exchange or receipt by Sunkist of notification from District Exchange, whichever shall be later. In the event the agreement thus remains in effect between an Association and Sunkist, such Association shall be affiliated with and market its fruit through another District Exchange or in the sole discretion of Sunkist may market its fruit directly through Sunkist as elsewhere in this agreement provided.

(2) With Sunkist

Any District Exchange may terminate this agreement as between it and Sunkist on the 31st day of October of any year by giving notice of such termination to Sunkist at the time and in the manner provided in subsections (d) and (e) hereof.

If a District Exchange shall give notice of termination to Sunkist as herein provided, such notice of termination shall not be deemed to constitute notice of termination by the Associations affiliated with such District Exchange, and unless such Associations shall give notice as provided

in subsection (a) hereof this agreement shall remain in full force and effect as to them, and such Associations shall be affiliated with and market their fruit through another District Exchange or in the sole discretion of Sunkist may market their fruit directly through Sunkist as elsewhere in this agreement provided.

(c) By Sunkist

Sunkist may terminate this agreement on the 31st day of October of any year as to any one or more District Exchanges or Associations by giving written notice of such termination to such District Exchange or Association at the time and in the manner provided in subsections (d) and (e) hereof.

In the event of the breach of this agreement by any District Exchange or Association, Sunkist may at its option terminate this agreement as to such District Exchange or Association at any time by giving such District Exchange or Association written notice of said breach and the election of Sunkist to terminate the agreement. Such termination shall be effective immediately.

If this agreement is terminated by Sunkist as to one or more District Exchanges and/or Associations, notice need be given only to such District Exchange or District Exchanges or Association or Associations and need not be given to other District Exchanges or Associations, except [fol. 1818] that in case of termination by Sunkist as to an Association, notice shall be given to the District Exchange with which such Association is affiliated.

In the event termination is judged to be to the best interests of the other District Exchanges and/or Associations, Sunkist may at any time by a two-thirds (⅔) vote of the entire board of directors terminate this agreement by giving written notice of such termination. Such termination shall be effective immediately.

(d) Time of Giving Notice

All notices of termination, except as otherwise specifically provided, shall be mailed during the last fifteen days of

September prior to October 31 of the year in which the agreement is to be terminated.

(e) Manner of Giving Notice

All notices of termination shall be given by depositing in the United States mail, postage fully prepaid, a registered letter containing a notice of such termination addressed to the party for whom intended.

(f) Time and Effect of Termination

When any such notice of termination is given, this agreement shall be terminated as to the party or parties affected at 11:59 P.M. on October 31 of the year in which said notice is given, except that when notice is given by Sunkist upon breach of the agreement, said termination shall be effective immediately.

The termination of this agreement as to any party or parties shall not affect rights which have accrued hereunder prior to termination. Any such termination shall not affect this agreement as to these remaining parties hereto.

30. Execution of Agreement

It is contemplated that this agreement will be executed in numerous copies identical except as to the names of the executing District Exchanges and Associations and as to date of execution. All such copies taken together shall constitute one agreement among all of the executing parties.

This agreement shall become effective as between Sunkist and any District Exchange when both of such parties execute one or more copies hereof, without regard to execution of the same by any Association or Associations.

This agreement shall become effective as to an Association when it and the District Exchange with which it desires to affiliate execute the agreement and when Sunkist has signified its approval of said Association's becoming a party hereto by likewise executing the same copy or copies of such agreement. An Association shall be deemed

to be affiliated with the District Exchange which executes the same copy or copies of this agreement as are executed by such Association.

A sufficient number of copies of this agreement shall be executed to provide Sunkist with a copy hereof executed by each signing Association as well as by each signing District Exchange.

[fol. 1819] WITNESS the signatures of the parties hereto, the actual date of signing appearing opposite the signature of each party.

Actual date of signing by Sunkist Growers, Inc.:

SUNKIST GROWERS, INC.

....., 19.... By .....
President

.....
Secretary

(seal)

Actual date of signing by District Exchange:

.....
(District Exchange)

....., 19.... By .....
President

.....
Secretary

(seal)

Actual date of signing by Association:

.....
(Association)

....., 19.... By .....
President

.....
Secretary

(seal)

[fol. 1820]

RESOLUTION AUTHORIZING SUNKIST GROWERS, INC. TO EXECUTE AGREEMENT

RESOLVED, that SUNKIST GROWERS, INC., execute the 1955 SUNKIST-DISTRICT EXCHANGE-ASSOCIATION AGREEMENT, and that the president or any vice president and the secretary or any assistant secretary of SUNKIST be and they are hereby authorized to subscribe said Agreement in the name and on behalf of SUNKIST, and to attach its seal thereto, and to deliver executed copies of the same to District Exchanges and Associations, parties thereto.

ATTEST: A true copy of resolution adopted September 7, 1955 by board of directors of SUNKIST GROWERS, INC.

(seal)

.....

Secretary of SUNKIST GROWERS, INC.

RESOLUTION AUTHORIZING DISTRICT EXCHANGE TO EXECUTE AGREEMENT

RESOLVED, that this DISTRICT EXCHANGE execute the 1955 SUNKIST-DISTRICT EXCHANGE-ASSOCIATION AGREEMENT, and that the president or any vice president and the secretary or any assistant secretary of this DISTRICT EXCHANGE be and they are hereby authorized to subscribe said Agreement in the name and on behalf of this DISTRICT EXCHANGE, and to attach its seal thereto, and to deliver executed copies of the same to SUNKIST and to each Association affiliated with this DISTRICT EXCHANGE.

ATTEST: A true copy of resolution adopted .....day, 19.... by board of directors of .....
(District Exchange)

(seal)

.....
Secretary of said DISTRICT EXCHANGE

RESOLUTION AUTHORIZING ASSOCIATION TO EXECUTE AGREEMENT

RESOLVED, that this ASSOCIATION execute the 1955 SUNKIST-DISTRICT EXCHANGE-ASSOCIATION AGREEMENT, and that the president or any vice president and the secretary or any assistant secretary of this ASSOCIATION be and they are hereby authorized to subscribe said Agreement in the name and on behalf of this ASSOCIATION, and to attach its seal thereto, and to deliver executed copies of the same to SUNKIST and to the District Exchange with which this ASSOCIATION is affiliated.

ATTEST: A true copy of resolution adopted .....day, 19.... by board of directors of .....
(Association)

(seal)

.....
Secretary of said ASSOCIATION

[fol. 1821]

EXHIBIT B TO STIPULATION

AGREEMENT

This Agreement made this ..... day of ..... 19...., between .....

.....

hereinafter called the Grower, and the Tempeco Groves Co., hereinafter called the Company, WITNESSETH:

That in consideration of the payments to be made by the Company as hereinafter stated, the Grower does hereby sell and agree to deliver to the Company at its packing house in Tempe, Arizona, in such amounts and at such times as the Company may require, all the marketable citrus fruit produced on ..... acres of land situated

.....

which said grove is now owned, operated or controlled by the Grower.

In consideration of the sale and delivery of the citrus fruit by the Grower as above mentioned, the Company does hereby agree to receive, process, grade, pack, and in an orderly manner, sell said fruit in such markets and at such prices as in its judgment may seem best, and to pay the Grower as hereinafter provided.

It is mutually agreed between the Grower and the Company:

First: That the Company will keep each lot of fruit delivered by the Grower under this Agreement separate from fruit which it may receive from any other source until the same is classed or graded and will keep a complete record of the same, but after so classifying or grading the Company may pool said fruit with like fruit received from other sources; the number of packed boxes of fruit and the amount of bulk fruit to be in any pool, as well as the length of time during which any pool may be in operation will be determined by the Company, as in its judgment

may seem best, and it will keep complete records of all fruit in, its costs of every kind incurred in connection with, and the proceeds from, each pool.

Second: That after the fruit is classified or graded the Company will market the same as herein provided and upon receiving all of the cash proceeds from any pool in which fruit delivered under this Agreement shall be included it will deduct and retain for itself from said proceeds all of its costs of every kind incurred in connection with such pool and on all fruit included therein, plus, not in excess of 5 cents per field box on grapefruit, 10 cents on oranges and lemons and miscellaneous varieties which shall be marketed from such pool and the balance then remaining shall be taken as net proceeds from the marketing of such pool.

Third: That when the net proceeds from each pool in which fruit delivered under this Agreement may be placed shall have been determined as above provided, the Company will render to the Grower a statement showing the net amount due, and will thereupon pay to the Grower the amount of said net proceeds as the full purchase price for the fruit delivered under this Agreement and included in such pool.

[fol. 1822] Fourth: That in the event the Grower shall have an oppprtunity to sell in bulk at the grove any part of the fruit sold and agreed to be delivered to the Company under this Agreement at a price higher than that which, in the judgment of the Company, will be received on the then operating pool or pools in which such bulk fruit would be included, the Grower, on application to the Company, may receive the Company's permission to sell in bulk at the grove such an amount of said fruit as may then be mutually agreed upon between the parties hereto and the Company will thereupon release from the operation of this Agreement the amount of fruit so agreed upon but the Grower shall pay to the Company $2.50 on each ton of the fruit so released.

Fifth: That this Agreement may be cancelled by written notice from the Grower during August of any year in which this Agreement is in force, or at any time by mutual consent of both parties hereto, but unless so cancelled shall be in full force and effect for 5 shipping seasons, ending July 31, 19.....

Sixth: The Company shall not be liable for any damage to fruit delivered under this Agreement that shall be due to any Act of God, or public enemy, or to strikes, or to any accident in shipment or storage.

This Agreement shall be binding upon the heirs, executors, administrators, and assigns of the Grower and upon the successors and assigns of the Company.

IN WITNESS WHEREOF the Grower and the Company have extended this Agreement in duplicate the day and year first above written.

....

Mail Address Grower

.....

Phone Number TEMPECO GROVES CO.

Age of grove ..... By .....

..... acres Marsh Seedless Grapefruit

..... acres Navel Oranges ..... acres Lemons

..... acres Seedling Oranges ..... acres Tangerines

..... acres Valencia Oranges

[fol. 1823]

EXHIBIT C TO STIPULATION

ARTICLES OF INCORPORATION
OF
SUNKIST GROWERS, INC.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, a majority of whom are citizens and residents of the State of California, and each of whom is a person engaged in the production or marketing of citrus fruits, have, pursuant to Sections 362 and 653r of the Civil Code of California providing for the amendment of articles of incorporation, voluntarily associated ourselves together for the purpose of forming a nonprofit cooperative horticultural association under the laws of the State of California, and for such purpose

WE HEREBY CERTIFY:

FIRST. That the name of said association is and shall be:

SUNKIST GROWERS, INC.

SECOND. That the purpose for which it is formed is:

To furnish the facilities and agencies through which the citrus fruits and their by-products of its members and growers represented by them may be marketed throughout the United States and other countries under such conditions as may be determined upon by contract between this Exchange and its members and organizations of growers which they represent;

To lessen the cost of marketing by creating agencies which will act for all members;

To insure the collection of sales; to facilitate the collection of damage claims; to encourage the improvement of the product and the package;

To improve the methods of fruit handling in the groves and in the packing houses; to improve the equipment and facilities for fruit handling; to standardize the grades and the pack, particularly of the advertised brands of the Exchange, and to increase the Exchange membership; to standardize the business methods of its cooperating organizations;

To increase the consumption of citrus fruits and their by-products by bringing about an equitable distribution thereof at all times to all markets and by developing new markets;

To organize and maintain a traffic department for the handling of traffic matters including claims; to maintain a legal department; to maintain an advertising department for the purpose of increasing the consumption of citrus fruits and their by-products; to institute and conduct any other department to assist in carrying out its purposes; [fol. 1824] to further and to safeguard the general interests of the citrus industry;

To purchase or otherwise acquire, own, hold, lease, mortgage and sell such real and personal property as may be necessary, desirable or convenient for the legitimate carrying on of any of its purposes; to purchase or otherwise acquire, to own, hold, sell, transfer or pledge shares of the capital stock of any corporation or association which may be necessary, convenient or desirable in furtherance of the legitimate purposes of the Exchange as contained herein, and while the owner thereof to exercise all the rights of ownership including the right to vote said shares of stock;

To apply for, take out, acquire, own, use and dispose of trademarks, copyrights and patents necessary, convenient or desirable for furthering any of the purposes for which this Exchange is formed, and to make rules and regulations with reference to the use thereof and from

time to time to change, modify or repeal such rules and regulations;

To borrow money of any person, firm or corporation, and to secure the payment thereof by note, mortgage, bond or deed of trust or other evidence of indebtedness or by any other lawful means, and to take and receive notes, bonds, mortgages, deeds of trust or any evidence of indebtedness for the use and benefit of said corporation;

The Exchange is instituted for the purposes of mutual help in the accomplishment of each of the purposes above set forth. It shall not have a capital stock and it shall not be conducted for profit.

THIRD. That the place where the principal business of said Exchange will be transacted is the City of Los Angeles, County of Los Angeles, State of California.

FOURTH. That said Exchange shall have perpetual existence.

FIFTH. That the number of directors of said corporation shall be twenty-six (26), and that the names and residences of the directors who are appointed for the first year, are:

Name	*Residence*
1. F. Q. Story	Alhambra, California
2. W. E. Sprott	Porterville, California
3. A. P. Harwood	Upland, California
4. H. E. Cheseboro	Covina, California
5. W. R. Powell	Glendora, California
6. P. J. Dreher	Pomona, California
7. S. J. Beals	Orange, California
8. W. G. Fraser	Riverside, California
9. A. P. Johnson	Riverside, California
10. Frank Scoville	Corona, California
11. E. F. Van Luven	Colton, California
12. W. H. Young	Duarte, California
13. D. Felsenthal	Los Angeles, California

[fol. 1825] SIXTH. This Exchange is organized without shares of stock. The voting power and the property rights and interest of each member shall be as follows:

1. The voting power of the members of this Exchange shall be equal, and each member shall have one vote.

2. The property rights and interest of the members of this Exchange shall be unequal. The general rule applicable to all members by which the property rights and interest of each member may be and are determined and fixed is as follows:

(a) For the purpose of defining the interest of the members in the property of this Exchange, said property shall be divided into two classes, (i) all property and assets acquired for the benefit and service of one or more specified varieties of fruit and paid for by assessments levied against such variety or varieties, and (ii) all other property and assets whatsoever of this Exchange;

(b) The property rights and interest of each member of this Exchange in all property and assets comprising class (i) above described at any time is such a proportion thereof as the total assessments theretofore paid by such member for the acquisition of such property bear to the total assessments theretofore paid for the acquisition of such property by all members;

(c) The property rights and interest of each member of this Exchange at any time in all property of this Exchange comprising class (ii) above described, is such a proportion thereof as the total of all assessments theretofore paid by such member, excluding assessments levied against a specified variety or varieties for the acquisition of the property and assets comprising class (i), bears to the total assessments, excluding such assessments levied against a specified variety or varieties, theretofore paid by all members.

It is agreed that either or both of said classes of property and assets, and/or any other class of property and

assets which may be hereafter established, may be put upon a revolving fund basis by a resolution approved and adopted by the board of directors of this Exchange, and approved by the vote or written consent of members of this Exchange holding at least two-thirds of the voting power and holding at least two-thirds of the property rights and interest of the class of property and assets to be affected by said revolving fund. In like manner and by like vote or consent any revolving fund so established may be from time to time changed, amended, modified or terminated.

2.5. This Section 2.5 establishes a revolving fund plan for certain property and assets of this Exchange of the class described in Section 2(a)(i) of this Article 6th. Said assets comprise all shares of the capital stock of The Exchange Orange Products Company hitherto or hereafter acquired by this Exchange, and said shares shall be deemed to include any increase therein which may be hereafter made, and any property and assets into which the same may be hereafter converted upon dissolution or other change in the form thereof. It is the intent of this Section [fol. 1826] 2.5 that a revolving fund plan shall be and it is hereby established pertaining to said stock (defined as above), the terms of which are as follows:

From and after November 1, 1947, there shall be and there is hereby levied and assessed by Exchange against each member and the group which such member may represent, except as otherwise determined by Exchange through its board of directors pursuant to the authority hereby conferred, in addition to other authorized charges, costs, and assessments, an assessment of not to exceed two cents (2¢) per packed box on all oranges and grapefruit marketed by him or it through Exchange in fresh fruit form or as products. The amount of the assessment and those subject to assessment shall be determined by the board of directors of Exchange, and said assessment may be increased or decreased from time to time, or it may be sus-

pended entirely, and, if so suspended, may thereafter be resumed, all in the discretion of said board of directors. For the purpose of this assessment a packed box is defined as the amount of the particular fruit involved which is contained in the standard packed box, or the equivalent thereof, in common use as determined from time by Exchange. Exchange is authorized to prescribe, and from time to time to change, the relationship or equivalent between the standard packed box and any equivalent thereof. Each member hereby assigns to Exchange the amount of any such assessment and authorizes Exchange to deduct the same from the proceeds of any oranges or grapefruit or orange or grapefruit products marketed by it for him.

The assessments, when collected by Exchange, shall be placed by it in a fund to be known as The Exchange Orange Products Company Revolving Fund. Said fund shall be used as follows: Exchange has on file with its secretary a list entitled The Exchange Orange Products Company Priority List 2(a)(i), which shows the names of those from whom assessments have heretofore been collected by Exchange for the purchase of said stock, and the amount and time of collection thereof, and the total of all assessments paid by members or those whom they represent. Said priority list will be continued to show assessments made pursuant to this plan, and the books and records of Exchange may be construed to constitute a continuation thereof. Payments from said fund to the persons on such priority list shall be made to them in the order of their priority thereon. Exchange is authorized to prescribe the manner of making such payments provided that those substantially prior in point of time shall be paid equitably and prior to payment to those who have made subsequent contribution. Contributors in any one year shall be paid in full before payment is made to the contributors of succeeding years. If the fund is insufficient to pay out in full all persons on the priority list for a given year, payment shall be made to the contributors for that year pro rata. When

the fund reaches such a maximum amount as is deemed proper by Exchange, the assessments thereafter collected by Exchange shall be paid, without interest, to the persons entitled thereto under this plan.

Exchange may at any time and from time to time use said fund or any part thereof for the purchase of additional capital stock of The Exchange Orange Products Company, [fol. 1827] or may apply part of said fund to such purpose and part to revolving fund purposes as set forth in this plan; and at any time when moneys are available in said fund and not immediately required for the aforesaid purposes, Exchange may utilize them as part of its operating capital until they are so required; in the event said Company should be dissolved and its assets should be taken over by Exchange, said fund may in a similar manner be utilized to acquire additional property of like nature and intended for the same general purposes as the plant of said Company. Exchange is authorized to determine the form in which the accounts of the revolving fund shall be kept and the manner in which the rights therein of each person shall be manifested, which may be by entries upon Exchange books.

The obligation of Exchange hereunder to make payments pursuant to the revolving fund plan hereby established shall not create nor shall it be construed to create any indebtedness of Exchange in favor of any person, and the payment to the person entitled thereto is restricted to the property in the fund in which the same shall be at the time invested. All payments under this plan to any persons entitled to payments shall at all times be subordinated to the payment by Exchange of its commercial, banking, and other general creditors, secured or unsecured, and other obligations, and payments hereunder shall not be made when to make the same will weaken the financial standing of Exchange. Nothing herein contained shall be construed to entitle any person on such priority list, or any person who has paid an assessment hereunder, to demand or to receive payment except only in the absolute discretion of

Exchange and as provided in its articles of incorporation and by-laws; and no person shall have the right to demand payment or an accounting under this plan more frequently than once annually, said accounting and payment to be made within a reasonable time after the close of the fiscal year of Exchange.

Exchange shall keep accurate financial accounts of all assessments made pursuant to its articles of incorporation and any marketing contracts between it and its shippers, as well as of all assessment made by it pursuant to the provisions of this plan. Its books showing such assessments and repayments shall be evidence of the property rights of each person therein.

The rights of members under this plan shall be non-negotiable, even though a certificate or other receipt or evidence may be issued by Exchange to evidence said assessments. The extent to which said property rights shall be assignable, and, if permitted, the procedure for any such assignments, shall be as prescribed from time to time by Exchange; provided, however, that nothing herein contained shall authorize or be construed to authorize any such contributor or his successor in interest, if assignment be permitted, to require any payments whatever to be made to him except only pursuant to the terms herein prescribed. If Exchange shall designate an association as a successor, as it is authorized to do by Section 4 of this Article 6th, it is understood and agreed that the rights of such member shall, at the option of Exchange, be carried over into such successor association, and any dissolution or other act referred to in said Section 4 hereof shall not terminate or be deemed to terminate this revolving fund.

[fol. 1828] Full power and authority is hereby conferred upon Exchange to prescribe by resolution or by amendments to its by-laws, and from time to time to change, reasonable rules and regulations concerning this revolving fund, including but not restricted to the time and manner of making assessments, the collection and repayment

thereof, the evidencing of the receipt thereof by Exchange, and the handling and management of assessments and payments; and to do all other acts and things which Exchange deems proper to carry out the purposes for which this revolving fund is established.

The provisions of this revolving fund plan now established may be from time to time changed, amended, modified, or terminated by the vote and in the manner provided in Section 2 of this Article 6th.

2.6. This Section 2.6 establishes a further and separate revolving fund plan for certain property and assets of this Exchange, namely, shares of the capital stock of The Exchange Orange Products Company, as defined in Section 2.5. The terms and conditions of Section 2.5 shall apply to the revolving fund plan established by this Section 2.6 except where inconsistent with the provisions of this Section 2.6. The terms of the revolving fund plan established hereby are as follows:

For the purpose of providing Exchange with additional funds for the purchase of capital stock of The Exchange Orange Products Company distinct and separate from the funds now being provided through the assessment of not to exceed two cents (2¢) per packed box on oranges and grapefruit marketed through Exchange, there is hereby established a supplementary revolving fund plan. For convenience of reference, said previous revolving fund calling for said two cents (2¢) per packed box assessment shall be designated as Revolving Fund "A" and the additional revolving fund provided for herein shall be designated as Revolving Fund "B". For the purpose of said Revolving Fund "B", effective at the start of Exchange's fiscal year 1949-50, there shall be and there is hereby levied and assessed by Exchange against each member and the group which such member may represent, in addition to other authorized charges, costs and assessments, an assessment based upon the net sales value of products, as defined in this paragraph. Said assessment shall be collected and paid

not less often than annually, and may in the discretion of Exchange be collected from time to time in installments, including appropriate installments to be deducted from progress payments on fruit pools. In the event Exchange shall distribute proceeds of sales of products in some other manner than through the use of pools, Exchange, by resolution of its board of directors, may establish another appropriate method or methods of collecting said assessment. For the purpose of this assessment "net sales value" is defined as the amount returned to members in full settlement of each products pool, not including peel products, but not reduced by the amount of this assessment. As used in this paragraph "products" means all orange and grapefruit juice products, including, but not limited to canned single strength juice, frozen concentrate and other concentrate, powdered juices and fruit segments, except that commencing with Exchange's fiscal year 1951-52 "products" shall mean any and all kinds of orange and grapefruit products including but not limited to juice products, and [fol. 1829] except that commencing with Exchange's fiscal year 1952-53 "products" shall mean any and all kinds of orange and grapefruit products including but not limited to juice products and also oranges and grapefruit sold as fruit to outside processors. The rate of said assessment for each crop year shall be determined by the board of directors of Exchange but shall not exceed a maximum of five percent (5%) of the net sales value of the products manufactured by varieties and sold by Exchange for each member. The amount of the assessment shall be determined by the board of directors of Exchange and said assessments may be increased or decreased from time to time, always subject to said maximum percentage, or it may be suspended entirely and, if so suspended, may thereafter be resumed, all in the discretion of said board of directors. All funds provided through Revolving Fund "B" shall be used for the purchase by Exchange of capital stock of The Exchange Orange Products Company until there has been

so purchased a total par value of said stock of three million five hundred thousand dollars ($3,500,000.00), whereupon said monies shall thereafter be devoted to repayments to the earliest contributors to said Revolving Fund "B" in the order of their priority. Each member hereby assigns to Exchange the amount of any assessments under this paragraph and authorizes Exchange to deduct the same from the proceeds of sale of any products marketed by it for him.

2.7. This Section 2.7 establishes a further and separate revolving fund plan for certain property and assets of Sunkist, namely, the land and building acquired to house certain offices of Sunkist Growers, Inc. The terms and conditions of Section 2.5 shall apply to the revolving fund plan established by this Section 2.7 except where inconsistent with the provisions of this Section 2.7. The terms of the revolving fund plan established hereby are as follows:

For the purpose of providing Sunkist with additional funds to finance the acquisition of a site and construction of an office building, there is hereby established a supplementary revolving fund plan. For convenience of reference, the additional revolving fund provided for herein shall be designated as Revolving Fund "C". For the purpose of said Revolving Fund "C", effective at the start of Sunkist's fiscal year 1955-56, there shall be and there is hereby levied and assessed by Sunkist, against each member and the group which such member may represent, in addition to other authorized charges, costs and assessments, an assessment of not to exceed two (2) mills per packed box equivalent on all fruit of all varieties marketed by him or it through Sunkist in fresh fruit form or as products. The amount of the assessment, within said limit, shall be determined by the Board of Directors of Sunkist, and said assessment may be increased or decreased from time to time, or it may be suspended entirely and, if so suspended, may thereafter be resumed, all in the discretion of said Board of Directors. All funds provided through Revolving

Fund "C" shall be used for the acquisition of a site and construction of an office building to be located in Ontario, California, and the total amount of said revolving fund shall not exceed the total cost of said site and building, as approved by the Board of Directors. When said fund equals said cost, any monies thereafter received shall be devoted to repayments to the earliest contributors to said Revolving Fund "C" in the order of their priority. Each [fol. 1830] member hereby assigns to Sunkist the amount of any assessments under this paragraph, and authorizes Sunkist to deduct the same from the proceeds of sale of any fruit marketed by it for him or it.

3. In the event the membership of any member of this Exchange shall terminate, either because of voluntary withdrawal by such member or otherwise, such member shall not thereupon become entitled to demand or receive his interest in the property and assets of this Exchange as herein defined, or to be paid the value thereof in money; but all members of this Exchange shall be entitled to share in the property and assets of this Exchange in accordance with the general rules above set forth only in the event of dissolution and/or liquidation of this Exchange, in which event they shall be entitled to their respective shares in the net assets remaining in accordance with said general rules. For the purpose only of computing property rights and interest under the foregoing general rule, "members" shall mean not only members who are members of and marketing their fruit through this Exchange at the time of dissolution and/or liquidation, but also former members who paid assessments, notwithstanding the fact that the membership of such former members may have terminated as above referred to, but such defmition shall not entitle any such person to vote as a member, after his membership shall have been terminated.

4. In the event this Exchange, by resolution duly adopted by its board of directors, shall at any time determine to

transfer the property and assets of this Exchange to a successor association and shall designate such association as the successor association of this Exchange, then the transfer of said property and assets by this Exchange to such successor association shall not be considered a dissolution or liquidation within the meaning of the foregoing definition. Such successor association may be formed or exist under state or federal laws, provided only it shall be in substance a farmers' nonprofit cooperative marketing association. Such successor association may be an association formed or recognized for such purpose, or it may be formed by merger, consolidation, or any corporate reorganization. Such property rights and interest shall be recognized and preserved in some equitable manner in such successor association.

5. Each member consents and agrees to the foregoing and agrees to be and is bound thereby.

IN WITNESS WHEREOF each of said persons has hereunto subscribed his name and seal, all done this 21st day of June, 1916.

F. Q. STORY
C. C. TEAGUE
W. M. GRISWOLD
G. S. BERRY
H. E. SWAN
W. G. FRASER
C. S. WHITCOMB
J. S. EDWARDS
A. S. HOLDEN
S. B. HAMPTON
ELMER W. HART
W. R. SPROTT
R. C. MERRYMAN
W. W. BACON
P. J. DREHER
A. E. BENNETT
JAMES BARNHILL

[fol. 1831]

NEW CODE OF BY-LAWS
OF
CALIFORNIA FRUIT GROWERS EXCHANGE

Approved and adopted July 5, 1916, as amended.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, together constituting and being all of the members, directors and Secretary of California Fruit Growers Exchange, a corporation, do hereby adopt the following new code of by-laws:

ARTICLE I

Former By-Laws Repealed.

All formed by-laws of this Exchange are hereby repealed.

ARTICLE II
MEETINGS OF MEMBERS

Section 1. Regular Members' Meetings.

A regular annual meeting of the members shall be held at the office of the Exchange at 2:30 o'clock p.m. on the first Wednesday in December of each year, the first meeting hereunder to be held in December 1953, for the purposes of electing a board of directors and transacting such other business as may come before the meeting.

Section 2. Special Members' Meetings.

Except in those instances where a particular manner of calling a meeting of the members is prescribed by the law or elsewhere in the by-laws of this Exchange, a special meeting of the members may be called at any time by the President, or by the vote of a majority of the board of directors, or by one-third of the members. Each call for

a special meeting of the members shall state the time, place and the purpose of such meeting; if made by the board of directors it shall be by resultion duly adopted and entered in the minutes; if made by the President or by members it shall be in writing, signed by the person or persons making the same, and unless the office of the Secretary be vacant, delivered to the Secretary. No business shall be transacted at a special meeting other than such as is included in the purposes stated in the call.

Section 3. Notice of Regular Members' Meeting.

Ten days' notice of each regular meeting of the members shall be given by order of the President by mail as herein provided. Such notice must state the time and the place of [fol. 1832] the meeting and that the purposes thereof are the election of a board of directors and the transaction of such other business as may come before the meeting, and a copy thereof shall be mailed to each member of the Exchange. Such notices shall be deposited in the post office at Los Angeles, California, with the postage thereon prepaid, at least ten days prior to the time for holding such meeting. Such envelope shall be mailed by the Secretary, but in case the office of Secretary be vacant or he shall refuse or neglect to mail the same, then such notices may be mailed by any director of the Exchange or by any person thereto directed by the President. Such notices shall be addressed to the residence or place of business of the member, as the same shall appear upon the books of the Exchange, and if the residence or place of business of such member does not appear upon the books of the Exchange, and his post office address is unknown to the person mailing such notice, the same shall be addressed to such member at Los Angeles, California.

Section 4. Notice of Members' Special Meeting.

Notice of each special meeting of the members shall be given by mailing to each member a sealed envelope contain-

ing a copy of the call for such meeting and addressed to his residence or place of business as the same shall appear upon the books of the Exchange. Such envelopes shall be deposited in the post office at Los Angeles, California, with the postage thereon prepaid, at least five days prior to the time fixed for such meeting. Such envelopes shall be mailed by the Secretary, but in case the office of the Secretary be vacant or he shall refuse or neglect to mail the same, as provided in this section, then such envelopes containing such copies may be so addressed and mailed by any director of the Exchange or by any person who shall have signed the call for such meeting. If the residence or place of business of any such member does not appear on the books of the Exchange and his post office address is unknown to the person mailing such envelopes, the same shall be addressed to such member at Los Angeles, California.

Section 5. Quorum.

At any meeting of the members a majority of the members being present in person or represented by proxy shall constitute a quorum for all purposes, including the election of directors, except when it is otherwise provided by law.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Number of Directors.

The corporate powers, business and property of the Exchange shall be exercised, conducted and controlled by a board of directors. Said board of directors shall consist of twenty-three (23) directors until such number is changed by amendment of the articles of incorporation or by an amendment to this by-law.

[fol. 1833] *Section 2. Election.*

The directors shall be elected annually at the regular annual meeting of the members from the membership of the Exchange.

Section 3. Vacancies.

Vacancies in the board of directors shall be filled by the other directors in office, and such persons shall hold office until the next regular annual meeting of the members thereafter, except as it is otherwise herein provided.

Section 4. First Meeting of Directors.

Immediately after each election of directors, the newly elected directors shall hold a regular meeting and organize by the election of a President, one or more Vice-Presidents, a Secretary, one or more Assistant Secretaries, a Cashier, one or more Assistant Cashiers, a Treasurer, and at such meeting may choose any or all other officers, agents or employees of the Exchange and transact any other business. The board of directors may also at that, or at any subsequent meeting, by resolution select one or more banks to act as depository of the funds of the Exchange and determine the manner of receiving, depositing and disbursing the funds of the corporation, the form of checks and the person or persons by whom the same shall be signed with power from time to time to change such banks and the person or persons signing said checks and the form thereof. Notice of such meeting is hereby dispensed with.

Section 5. Regular Directors' Meetings.

In addition to the regular meeting mentioned above, a regular meeting of the board of directors shall be held at 9:30 o'clock a.m. on the first and third Wednesdays of each month.

Section 6. Special Directors' Meetings.

A special meeting of the board of directors shall be held whenever called by the President or by one-third of the directors. Any and all business may be transacted at a special meeting. Each call for a special meeting shall be in writing, signed by the person or persons making the same, addressed and delivered to the Secretary, and shall state the time and place of such meeting.

Section 7. Notice of Regular Meeting of Directors.

No notice of the regular meetings of the directors need be given but each director shall take notice thereof. Notice of such meeting is hereby dispensed with.

Section 8. Notice of Special Meeting of Directors.

Notice of each special meeting of the directors shall be given by mailing to each director a sealed envelope containing a copy of the call for such meeting, addressed to his residence or place of business. Such envelopes shall be deposited in the post office at Los Angeles, California, with the postage thereon prepaid, at least two days prior to the [fol. 1834] time of such meeting. Such envelopes shall be mailed to the Secretary, but in case he is unable or refuses to act, such envelopes may be so addressed and mailed by any person who shall have signed the call for such meeting.

Section 9. Quorum for Special Purpose.

A majority of the authorized number of directors shall be necessary to constitute a quorum for the transaction of business; provided, however, that in the absence of a quorum of directors who have been previously regularly seated, the quorum for the purposes of accepting resignations of directors and seating instead of such resigned directors persons nominated by district exchanges to act for them as members in and directors of Sunkist shall be one-third the authorized number of directors.

ARTICLE IV

POWER OF DIRECTORS

The directors shall have power:

1. To call special meetings of the members when they deem it necessary. And they shall call a meeting at any time upon the written request of one-third of the members.

2. To appoint and remove, at pleasure, all officers, agents and employees of the Exchange, prescribe their duties, fix their compensation, and require from them, if deemed advisable, security for faithful service.

3. To conduct, manage and control the affairs and business of the Exchange and to make rules and regulations not inconsistent with the laws of the State of California, the articles of incorporation of the Exchange or its by-laws for the guidance of the officers and management of its affairs.

ARTICLE V

DUTIES OF DIRECTORS

It shall be the duty of the directors:

1. To keep a complete record of all their business transactions, to keep minutes and acts, and of the proceedings of the members, and furnish the members a full report after the close of each fiscal year and within the period required by law, showing in detail the condition of the affairs of the Exchange. A similar report shall be presented at any meeting of the members when thereto required by at least one-third of the members of the Exchange.

2. To supervise all officers, agents and employees and see that their duties are properly performed. To cause to be issued to the members appropriate certificates of membership as prescribed by order of the board of directors.

[fol. 1835] 3. To carry out and faithfully perform the terms of all contracts which shall be made by this Exchange with the several District Exchanges, as well as the terms of all other contracts which may be entered into by this Exchange.

4. The directors shall receive no compensation or expenses from the Exchange for their services in acting as directors of the Exchange.

ARTICLE VI

OFFICERS

The officers of the Sunkist shall be a President, one or more Vice-Presidents, a Secretary, one or more Assistant Secretaries, a Cashier, one or more Assistant Cashiers, a Treasurer, one or more Assistant Treasurers and a General Manager, together with any other officers which the board of directors may see fit in its discretion to provide for by resolution entered upon its minutes.

The compensation and tenure of office of all officers of Sunkist other than directors shall be fixed and determined by the board of directors.

ARTICLE VII

THE PRESIDENT

The board of directors shall, at their first regular meeting, elect one of their number to act as President; and if at any time the President shall be unable to act, any Vice-President shall take his place and perform his duties; and if the Vice-Presidents from any cause shall be unable to act, the board shall appoint one of its members to act, in whom shall be vested for the time being all of the duties and functions of President. The President, or in his absence such Vice-President or director acting as President, shall:

1. Preside over all meetings of the members and directors.

2. Sign, as President, all certificates of membership, and all contracts and other instruments which have been first approved by the board of directors.

3. Call the directors together whenever he deems it necessary, and discharge such other duties as may be required of him by these by-laws.

ARTICLE VIII

SECRETARY

It shall be the duty of the Secretary:

1. To keep a journal of all meetings of the directors [fol. 1836] and members of the Exchange, with the time and place of holding the same; whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present and who absent; and, if requested by any director or member, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director or member to any action or proposed action must be entered in full.

2. To keep the corporate seal of the Exchange and, when directed to do so by the Exchange, affix the same to all papers requiring the corporate seal.

3. To keep a proper membership book, showing the name of each member of the Exchange, the number of his membership certificate, and the date of its issuance, surrender, cancellation, forfeiture or transfer.

4. To discharge such other duties as pertain to his office and as are prescribed by the board of directors.

5. To serve all notices required either by law or by the by-laws of the Exchange. In case of his absence, inability,

refusal or neglect so to do, such notices may be served by any person thereunto directed by the President or any Vice-President of the Exchange.

ARTICLE IX

TREASURER

The Treasurer shall:

1. Receive and keep all of the moneys of the Exchange, provided, however, that all moneys arising from the sale of fruit or otherwise belonging to or coming into the possession of the Exchange, shall be by the Treasurer immediately deposited in such bank or banks as shall be designated from time to time by the board of directors, and no moneys shall be withdrawn from such banks except upon check of the Exchange, signed by the cashier, any Assistant Cashier, or the Treasurer, and countersigned by the Secretary, any Assistant Secretary, President or any Vice-President, or otherwise, as the board of directors may from to time by its resolution prescribe. Provided, however, that moneys deposited from sale of fruit may be withdrawn from one bank for deposit to the credit of Exchange in another upon check of the Exchange signed by the Cashier, any Assistant Cashier, or the Treasurer. Any moneys so arising from the sale of fruit or otherwise coming into the possession of the Exchange may, pending payment thereof to the shipper or other person entitled thereto, be used and employed by the Exchange under such regulations and for such time as the board of directors may from time to time by its resolution prescribe.

2. At each annual meeting of the members, and as often as the board of directors may require it to be done, submit [fol. 1837] for their inspection a complete statement of his accounts, with proper vouchers, and at each and every regular meeting of the board of directors he shall submit a statement showing the receipts, disbursements and balances on hand. He shall discharge such other duties appertaining to his office as shall be prescribed by the board of direc-

tors, and shall furnish such bond from time to time as the board of directors may require.

ARTICLE X

AUDITING COMMITTEE

The board of directors of the Exchange may by resolution provide for the appointment or selection of an auditing committee from among its members, determine the number of its members and its tenure of office. It shall be the duty of this auditing committee to meet at least once a month to pass upon all accounts and expenditures of the Exchange.

ARTICLE XI

BOOKS AND PAPERS

All books and records of this Exchange shall at all times in business hours be subject to the inspection of the board of directors or any member.

ARTICLE XII

MEMBERSHIP AND VOTING

The general purpose for which the Exchange is instituted is to furnish the facilities and agencies through which the citrus fruits and their by-products of its members and growers represented by them may be marketed and distributed upon a uniform plan and in such manner as to bring about a standard of quality, a more uniform distribution and a larger consumption thereof in the markets of the United States and in other places. In order to make such facilities and agencies available to the grower, the plan of the Exchange includes the organization of the growers into "Local Associations" and the affiliation of those local associations into "District Exchanges".

EXCHANGE MEMBERSHIP

This Exchange will have as many members as there are District Exchanges under contract, as such, with this Ex-

change. Each District Exchange will nominate some person to act for it as its member in this Exchange. This Exchange will have as many directors as it has District Exchange members, so that each member thus nominated by the District Exchange will also be a director of this Exchange.

Each District Exchange may at will, and as often as it desires, change its member representative in this Exchange. [fol. 1838] Upon the certification of a new representative to the board of directors of this Exchange, the membership of the former representative of such District Exchange shall absolutely cease and terminate. Such new representative shall thereupon be elected by this Exchange as one of its directors in place of the former member.

This Exchange shall issue a certificate of membership to each member but neither said membership nor said certificate thereof shall be assigned by a member to any other person or corporation, nor shall the assignee or transferee thereof be entitled to membership in this Exchange or become a member of this Exchange by virtue of such transfer. The board of directors may, however, by motion duly adopted by it, consent to such assignment and transfer and to the acceptance of the assignee or transferee as a member of this Exchange, but it is expressly understood and agreed between all of the members that no membership shall be transferred or any membership certificate assigned unless with the consent of the board of directors of this Exchange first had and received. However, when a District Exchange desires to change its member representative in this Exchange from one person to another, the board of directors of this Exchange shall recognize the transfer and assignment of such membership and issue a new membership certificate to such new representative. The manner in which the District Exchange may indicate that it desires to change its representative as well as the method by which any change of such representative is to be brought about, shall be determined by the board of directors of this Exchange by resolution entered upon its minutes.

No person shall be a member of this Exchange unless he and the District Exchange which he represents markets all of the citrus fruits which he and it has to market or dispose of through the facilities and agencies afforded by this Exchange, and if any member or District Exchange shall cease, fail, neglect or refuse for any reason whatsoever to market the whole of such citrus fruits through this Exchange, then in that event the membership of such member and of such District Exchange in this Exchange shall ipso facto cease and terminate, and the membership certificate of such member and his membership in this Exchange shall be canceled.

Each District Exchange agrees that it will require each of the Local Associations composing its membership to enter into uniform contracts with it in such manner and form as may be prescribed by the board of directors of this Exchange, which contracts will require each Local Association to market all of the citrus fruit which it has to market or dispose of through this Exchange and said District Exchange.

The voting power and property rights shall be as shown in the articles of incorporation of this Exchange.

The Exchange shall have power from time to time to admit additional members to its organization whenever there shall be in its opinion sufficient reason to make an additional District Exchange advisable, which new member (and the District Exchange which such member represents) shall be entitled to vote and to contribute to and share [fol. 1839] in the property of the Exchange with the former members, in accordance with the general rule set forth in the articles of incorporation of this Exchange, it being the purpose of this Exchange that its facilities be available all times and upon equal terms to all growers of citrus fruits, provided only that such growers shall have first provided themselves with proper local association and district exchange facilities.

ARTICLE XIII

PROXIES

Any member shall be permitted to vote at any meeting of the members, either regular or special, by proxy, which proxy shall be in writing executed by the member in the manner and form required or permitted by law.

ARTICLE XIV

GENERAL MANAGER

The board of directors may in its discretion appoint a General Manager who shall hold office at the pleasure of the board of directors. Any director or other person may be elected to serve as General Manager. The General Manager shall have such authority and shall perform such duties as are incident to the office.

ARTICLE XV

RE BORROWING MONEY

The board of directors shall have the power to incur indebtedness, and the terms and amount thereof shall be entered in the minutes.

ARTICLE XVI

SEAL

The board of directors shall provide a suitable seal containing the name of the Exchange, the date of its incorporation and other appropriate words, and may alter the same at pleasure.

ARTICLE XVII

AMENDMENT

These by-laws may be altered or amended at any annual meeting of the members or at any other meeting of the members called for that purpose by the directors, by a vote representing two-thirds of the members. The written assent of two-thirds of the members is effectual to repeal or amend any by-law or to adopt additional by-laws.

[fol. 1840]

EXHIBIT D TO STIPULATION

INCORPORATED UNDER THE LAWS OF
THE STATE OF CALIFORNIA
MARCH 27, 1905

No._____

Sunkist Growers, Inc.

MEMBERSHIP CERTIFICATE

This Certifies that.....is a member of

Sunkist Growers, Inc.

herein termed "Sunkist," a nonprofit cooperative marketing association, without capital stock, subject at all times to the provisions and contracts contained in its articles of incorporation and by-laws; and said member by the acceptance hereof and of membership in Sunkist does hereby agree both for himself and for any transferee of his to be bound by said articles of incorporation and by-laws and all rules and regulations of Sunkist now in force or hereafter adopted.

The articles of incorporation of Sunkist provide that the voting power of the members of Sunkist is equal and each member has one vote, and that the property rights and interest of the members are unequal. The general rule applicable to all members by which the property rights and interest of each member are determined and fixed is set forth in Article 6th of said articles of incorporation. Said articles of incorporation authorize the levying of assessments by Sunkist against each member and the group which such member may represent. Reference is hereby made to said articles of incorporation for particulars as to said matters.

The by-laws of Sunkist contain restrictions upon transfer. A copy of Article XII of the by-laws containing such restrictions upon transfer is set forth on the reverse of this certificate.

WITNESS the seal of Sunkist Growers, Inc. and the signatures of its duly authorized officers.

DATED this.....day of....., 19.....

_____ SECRETARY

_____ PRESIDENT

FOR VALUE RECEIVED, the undersigned, a member of Sunkist Growers, Inc., herein called "Sunkist," hereby transfers and assigns this certificate and all his rights thereunder and in and to said Sunkist and in and to all contracts contained in the articles of incorporation and by-laws of Sunkist and in and to the contracts and resolutions referred to in this certificate and in and to all revolving fund credits now or hereafter accruing thereunder, to.....

.....,

which transferee by this transfer and assignment shall be bound by all terms, conditions and contracts contained in the articles of incorporation and by-laws of Sunkist, and said contracts and resolutions, and said transferee does by the acceptance of this transfer and assignment agree to be bound thereby and to so acknowledge in writing. This transfer and assignment shall not be effective, however, until after the consent of said Sunkist shall have been obtained.

DATED this.....day of.....,

19.....

.....

Witness:

.....

Article XII of the by-laws of Sunkist Growers, Inc., which association is sometimes referred to in said by-laws as "Exchange", reads as follows:

Article XII.

Membership and Voting.

The general purpose for which the Exchange is instituted is to furnish the facilities and agencies through which the citrus fruits and their by-products of its members and growers represented by them may be marketed and distributed upon a uniform plan and in such manner as to bring about a standard of quality, a more uniform distribution and a larger consumption thereof in the markets of the United States and in other places. In order to make such facilities and agencies available to the grower, the plan of the Exchange includes the organization of the growers into "Local Associations" and the affiliation of those local associations into "District Exchanges".

Exchange Membership

This Exchange will have as many members as there are District Exchanges under contract, as such, with this Exchange. Each District Exchange will nominate some person to act for it as its member in this Exchange. This Exchange will have as many directors as it has District Exchange members, so that each member thus nominated by the District Exchange will also be a director of this Exchange.

Each District Exchange may at will, and as often as it desires, change its member representative in this Exchange. Upon the certification of a new representative to the board of directors of this Exchange, the membership of the former representative of such District Exchange shall absolutely cease and terminate. Such new representative shall thereupon be elected by this Exchange as one of its directors in place of the former member.

This Exchange shall issue a certificate of membership to each member but neither said membership nor said certificate thereof shall be assigned by a member to any other person or corporation, nor shall the assignee or transferee thereof be entitled to membership in this Exchange or become a member of this Exchange by virtue of such transfer. The board of directors may, however, by motion duly adopted by it, consent to such assignment and transfer and to the acceptance of the assignee or transferee as a member of this Exchange, but it is expressly understood and agreed between all of the members that no membership shall be transferred or any membership certificate assigned unless with the consent of the board of directors of this Exchange first had and received. However, when a District Exchange desires to change its member representative in this Exchange from one person to another, the board of directors of this Exchange shall recognize the transfer and assignment of such membership and issue a new membership certificate to such new representative. The manner in which the District Exchange may indicate that it desires to change its representative as well as the method by which any change of such representative is to be brought about, shall be determined by the board of directors of this Exchange by resolution entered upon its minutes.

No person shall be a member of this Exchange unless he and the District Exchange which he represents markets all of the citrus fruits which he and it has to market or dispose of through the facilities and agencies afforded by this Exchange, and if any member or District Exchange shall cease, fail, neglect or refuse for any reason whatsoever to market the whole of such citrus fruits through this Exchange, then in that event the membership of such member and of such District Exchange in this Exchange shall ipso facto cease and terminate, and the membership certificate of such member and his membership in this Exchange shall be canceled.

Each District Exchange agrees that it will require each of the Local Associations composing its membership to enter into uniform contracts with it in such manner and form as may be prescribed by the board of directors of this Exchange, which contracts will require each Local Association to market all of the citrus fruit which it has to market or dispose of through this Exchange and said District Exchange.

The voting power and property rights shall be as shown in the articles of incorporation of this Exchange.

The Exchange shall have power from time to time to admit additional members to its organization whenever there shall be in its opinion sufficient reason to make an additional District Exchange advisable, which new member (and the District Exchange which such member represents) shall be entitled to vote and to contribute to and share in the property of the Exchange with the former members, in accordance with the general rule set forth in the articles of incorporation of this Exchange, it being the purpose of this Exchange that its facilities be available all times and upon equal terms to all growers of citrus fruits, provided only that such growers shall have first provided themselves with proper local association and district exchange facilities.

[fol. 1842]

EXHIBIT E TO STIPULATION

ARTICLES OF INCORPORATION
OF
THE EXCHANGE ORANGE PRODUCTS COMPANY

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, all of whom are residents and citizens of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the general laws of the State of California, and for such purpose

WE HEREBY CERTIFY: z

1st

The Name.

That the name of said corporation is and shall be

THE EXCHANGE ORANGE PRODUCTS COMPANY

2nd

The Purposes.

That the purposes for which it is incorporated are:

(a) To acquire and to take over, as a going concern, the business, either in whole or in part, now carried on by Exchange Orange Products Company, a corporation, with its principal place of business at Los Angeles, California, and in connection therewith to purchase its good will and business and all or any of its assets and to pay for such property in cash or stock of this corporation or otherwise, and to exercise all of the powers necessary or incident to the conduct of such business.

(b) To purchase or otherwise acquire, receive, press, treat, extract and otherwise handle oranges with a view to

converting them into orange food products and by-products such as marmalades, jams, jellies, orange oil, orange peel and other orange products and by-products.

(c) To purchase or otherwise acquire, receive, press, treat, extract, and otherwise handle lemons, with a view to converting them into their derivatives, such as citrate of lime, citric acid, lemon oil, candied peel, lemon juice, and other by-products.

(d) To purchase or otherwise acquire, receive, treat, and otherwise handle grapefruit, with a view to converting them into all necessary or proper residual or by-products, or in connection with any other operations of the Company.

[fol. 1843] (e) To purchase, sell, deal in, and handle all products of agriculture and horticulture, and to treat and render salable all by-products and residual products therefrom.

(f) To purchase or otherwise acquire, own, hold, improve, cultivate, lease, mortgage, sell, and convey real estate or any right or interest therein or appurtenant thereto; to purchase or otherwise acquire, manufacture, own, hold, lease, mortgage, sell and convey personal property of any kind.

(g) To obtain, register, purchase, or otherwise acquire; to hold, use, own, operate, develop, and introduce; to sell, assign, lease, pledge, or mortgage; to acquire or grant licenses in respect of; and otherwise generally to deal in and turn to account any and all copyrights, concessions, trademarks, trade names, distinctive marks or devices, formulae, secret or other unpatented processes, patents, patent rights, applications for patents, and all inventions, processes, improvements secured under Letters Patent or otherwise, of the United States of America or of any other Government or Country, relating to or used, useful, or convenient in the accomplishment of any of the purposes herein set forth.

(h) To subscribe or cause to be subscribed for, and to purchase or otherwise acquire, hold, own, sell, assign, transfer, mortgage, pledge, hypothecate, transfer in trust, exchange, distribute, or otherwise dispose of the whole or any part of the shares of the capital stock, bonds, coupons, mortgages, deeds of trust, debentures, securities, evidences of indebtedness, notes or other obligations, good will, rights, assets and property of any and every kind, or any part thereof, of any other corporation or corporations, association or associations, or of any joint stock company, or partnership now or hereafter existing and whether created under or by virtue of the laws of the State of California, or of any other state, territory, district, government, or country, or otherwise, and to operate, manage, and control such properties or any of them, either in the name of any such corporation, association, joint stock company or partnership, or of this corporation, and while the owner or holder of any of said shares of capital stock or of such bonds, coupons, mortgages, deeds of trust, debentures, evidences of indebtedness, notes or other securities, to exercise all of the rights, powers, and privileges that the owner or holder thereof, if a natural person, might or could exercise, including the right to vote thereon, and to appoint a proxy for that purpose, from time to time, as fully as and to the same extent that a natural person, being the owner or holder thereof, might or could do.

(i) To borrow money of any person, firm or corporation, and to secure the payment thereof by note, mortgage, bond or deed of trust or other evidence of indebtedness or by any other lawful means, and to take and receive notes, bonds, mortgages, deeds of trust or any evidence of indebtedness for the use and benefit of said corporation.

(j) To do, perform and conduct every, all or any matter, [fol. 1844] thing, business or undertaking necessary, proper or lawful to carry into effect any of the foregoing powers.

(k) The several clauses contained in this statement of purposes shall be construed as both purposes and powers,

and the statements contained in each clause shall, except where otherwise expressed, be in no wise limited or restricted by reference to, or inference from, the terms of any other clause, but shall be regarded as independent purposes and powers.

No stockholder of this corporation shall have the right to require the corporation or its directors to so conduct its business as to earn a corporate profit or to declare a dividend it being expressly agreed and understood that the proceeds of sale, less the necessary selling costs and expense, is to be turned back to the grower stockholders of the corporation, on the basis of the quantity of product furnished by them to this corporation, all upon terms to be set forth in a contract or contracts to be made from time to time between this corporation and its said grower stockholders.

3rd

Place Where Principal Business is to be Transacted.

That the place where the principal business of said corporation is to be transacted is the City of San Dimas, County of Los Angeles, State of California.

4th

Term for which to Exist.

That the term for which said corporation is to exist is fifty (50) years from and after the date of its incorporation.

5th

Number of Directors.

That the number of directors of said corporation shall be eleven (11), and the names and residences of those who are appointed for the first year and to serve until the election and qualification of such officers are as follows:

Names	*Residences*
N. T. Edwards	Whittier, California
D. C. Crookshank	Pomona, California
Louis A. Brundige	Whittier, California
Joy G. Jameson	Corona, California
A. B. Shaw	Pasadena, California
W. K. Beattie	Upland, California
E. T. Cassel	San Dimas, California
J. S. Edwards	Redlands, California
R. K. Pitzer	Pomona, California
John I. Cumming	Rialto, California
A. E. Bennett	Tustin, California

[fol. 1845]

6th

Amount of Capital Stock.

That the amount of the capital stock of said corporation is One Hundred and Fifty Thousand ($150,000.00) Dollars, and the number of shares into which it is divided is fifteen thousand (15,000) shares, and the par value of each of said shares is Ten ($10.00) Dollars.

7th

Capital Stock Actually Subscribed.

That the amount of said capital stock which has been actually subscribed is One Hundred Ten ($110.00) Dollars, and the following are the names of the persons by whom the same has been subscribed, together with the number of shares and the amount actually subscribed by each, namely:

Names of Subscribers	*No. of Shares*	*Amount*
N. T. Edwards	One	$10.00
D. C. Crookshank	One	10.00
Louis A. Brundige	One	10.00
Joy G. Jameson	One	10.00
A. B. Shaw	One	10.00
W. K. Beattie	One	10.00
E. T. Cassel	One	10.00
J. S. Edwards	One	10.00
R. K. Pitzer	One	10.00
John I. Cumming	One	10.00
A. E. Bennett	One	10.00

Signatures to Articles of Incorporation of THE EXCHANGE ORANGE PRODUCTS COMPANY.

IN WITNESS WHEREOF, we have hereunto set our hands and seals as of this 24th day of September, 1920.

N. T. Edwards
D. C. Crookshank
Louis A. Brundige
Joy G. Jameson
A. B. Shaw
W. K. Beattie
E. T. Cassel
J. S. Edwards
R. K. Pitzer
John I. Cumming
A. E. Bennett

[fol. 1846]

BY-LAWS OF
THE EXCHANGE ORANGE PRODUCTS COMPANY

ARTICLE I
MEETINGS OF SHAREHOLDERS

Section 1. Regular Meetings.

A regular meeting of the shareholders shall be held at the place hereinafter in these by-laws provided for the holding of meetings of the shareholders, at 3:00 o'clock p.m., on the first Wednesday in December of each year, the first meeting hereunder to be held in December, 1953, for the purpose of electing a board of directors and transacting such other business as may come before the meeting.

Section 2. Special Meetings.

Except in those instances where a particular manner of calling a meeting of the shareholders is prescribed by law or elsewhere in these by-laws, a special meeting of the shareholders may be called at any time by the president or any vice president or by the board of directors, or by the holders of not less than one-third of the shares then issued and outstanding. Each call for a special meeting of the shareholders shall state the time, place, and the purpose of such meeting; if made by the board of directors it shall be by resolution duly adopted by a majority vote and entered in the minutes; if made by the president or a vice president or by the shareholders, it shall be in writing and signed by the person or persons making the same, and unless the office of secretary be vacant, delivered to the secretary. No business shall be transacted at a special meeting other than as is stated in the call and the notice based thereon.

Section 3. Notice of Regular and Special Meetings of the Shareholders.

(a) No notice need be given of the regular meeting of the shareholders, but each shareholder shall take notice thereof.

(b) Notice of each special meeting of the shareholders of the corporation shall be given by mailing to each of the shareholders of the corporation a notice of the time, place, and purpose of such meeting, addressed to such shareholder at his residence or place of business as the same shall appear upon the books of the corporation. Notices of each special meeting shall be deposited in a United States Post Office or mail box or mail chute or other agency thereof at any place within the County where at the time of such mailing the principal office for the transaction of the business of the corporation is located, with the postage thereon prepaid, at least five days prior to the time fixed for such meeting. If the residence or place of business of a share-

holder does not appear on the books of the corporation [fol. 1847] and his post office address is unknown to the person mailing such notices, the same shall be addressed to him at the place where at the time of such mailing the principal office for the transaction of the business of the corporation is located.

Section 4. Quorum.

At any meeting of the shareholders the presence in person or by proxy of the holders of a majority of the shares entitled to vote at any meeting shall constitute a quorum for the transaction of business, except when it is otherwise provided by law. Any regular or special meeting of the shareholders may adjourn from day to day, or from time to time, if, for any reason, there are not present in person or by proxy the holders of a majority of the shares entitled to vote at said meeting, . . if no election is had, such adjournment and the reasons therefor being recorded in the minutes of the proceedings.

Section 5. Waiver of Notice.

When all of the shareholders of the corporation are present at any meeting, or when the shareholders not represented thereat give their written consent to the holding thereof at the time and place the meeting is held, and such written consent is made a part of the records of such meeting, the proceedings had at such meetings are valid, irrespective of the manner in which the meeting is called or the place where it is held.

ARTICLE II

BOARD OF DIRECTORS

Section 1. Number—Quorum.

The business of the corporation shall be managed by a board of directors of such number of directors as the share-

holders may from time to time determine in the manner prescribed by law. A majority of the prescribed number of directors shall be necessary to constitute a quorum for the transaction of business; provided however that in the absence of a quorum of directors who have been previously regularly seated, the quorum for the purpose of accepting resignations of directors and seating instead of such resigned directors persons nominated by district exchanges as their representatives to this board of directors shall be one-third the authorized number of directors. Every act or decision of a majority of the directors present, at a meeting at which a quorum is present, made or done when duly assembled, shall be valid as the act of the board of directors; provided however, that in the absence of a quorum a majority of the directors present at any directors' meeting may adjourn from time to time until the time fixed for the next regular meeting of the board, but may not transact any other business.

Section 2. Election and Eligibility.

The directors must be elected annually at the regular meeting of the shareholders as provided by law; they need [fol. 1848] not be shareholders. No person shall be eligible to be elected or to act as such director unless he is at the time of his election a director of California Fruit Growers Exchange, and if any person while a member of the board of directors of this corporation ceases to be a director of California Fruit Growers Exchange his seat as a director of this corporation may be declared vacant by the board of directors of this corporation.

Section 3. Vacancies.

Vacancies in the board of directors may be filled by a majority of the remaining directors, though less than a quorum, and each director so elected shall hold office until his successor is elected at the next annual meeting of the

shareholders or at any special meeting duly called for that purpose prior thereto. A vacancy shall be deemed to exist in case the shareholders shall increase the authorized number of directors, but shall fail, for a period of thirty days from the effective date of such increase, to elect the additional directors so provided for, or in case the shareholders fail at any time to elect the full number of authorized directors. When one or more of the directors shall give notice of his or their resignation to the board, effective at a future date, the board shall have the power to fill such vacancy or vacancies to take effect when such resignation becomes effective. Each director so appointed shall hold office during the remainder of the term of office of the resigning director or directors or until their successors are appointed and qualify.

Section 4. First Meeting of Directors.

Upon their election the directors shall meet and organize by the election of a president, a secretary, and a treasurer. They may also at that meeting or at a later meeting elect such other officers as are provided for by these by-laws or permitted by law.

Section 5. Regular Meetings.

In addition to the regular meetings mentioned above, a regular meeting of the board of directors shall be held at 9:30 o'clock a.m. on Wednesday of each week.

Section 6. Special Meetings.

A special meeting of the board of directors shall be held whenever called by the president or any vice president or by five directors. Any and all business may be transacted at a special meeting. Each call for a special meeting shall be in writing, signed by the person or persons making the same, addressed and delivered to the secretary, and shall state the time and place of such meeting.

Section 7. Notice of Regular and Special Meetings of the Directors.

No notice shall be required to be given of any regular meeting of the board of directors, but each director shall take notice thereof. Notice of each special meeting of the board of directors shall be given to each of the directors by mailing to each of them a copy of such notice at least 72 [fol. 1849] hours prior to the time fixed for such meeting, to the address of such director as shown on the books of the corporation. If his address does not appear upon the books of the corporation, then such notice shall be addressed to him at the place where at the time of such mailing the principal office for the transaction of the business of the corporation is located.

Section 8. Waiver of Notice.

When all the directors of the corporation are present at any directors' meeting, however called or noticed, and sign a written consent thereto, on the records of such meeting, or if the majority of the directors are present, and if those not present sign in writing a waiver of notice of such meeting, whether prior to or after the holding of such meeting, which said waiver shall be filed with the secretary of the corporation, the transactions of such meeting are as valid as if had at a meeting regularly called and noticed.

ARTICLE III

POWERS OF DIRECTORS

The Directors shall have power:

1. To call special meetings of the shareholders when they deem it necessary; and they shall call a meeting at any time upon the written request of shareholders holding one-third of all of the shares.

2. To appoint and remove at pleasure all officers, agents, and employees of the corporation, prescribe their duties,

fix their compensation, and to require from them security for faithful service.

3. To create and appoint committees, offices, officers, and agents of the corporation, and to prescribe and from time to time change their duties and compensation.

4. To conduct, manage, and control the affairs and business of the corporation and to make rules and regulations not inconsistent with the laws of the State of California or the by-laws of the corporation for the guidance of the officers and management of the affairs of the corporation.

5. To levy and collect assessments upon all shares of stock of the corporation in the manner and form, and to the extent provided in the articles of incorporation.

ARTICLE IV

DUTIES OF DIRECTORS

It shall be the duty of the directors:

1. To cause to be kept a complete record of all their minutes and acts, and of the proceedings of the share-[fol. 1850] holders, and present a full statement at the regular annual meeting of the shareholders, showing in detail the assets and liabilities of the corporation, and generally the conditions of its affairs. A similar statement shall be presented at any other meeting of the shareholders when required by persons holding at least one-half of the shares of the corporation.

2. To supervise all officers, agents, and employees and see that their duties are properly performed. To cause to be issued to the shareholders, in proportion to their several interests, certificates of stock.

ARTICLE V
OFFICERS

The officers shall be a president, a secretary, and a treasurer, and the board of directors may also appoint a chairman of the board, which officers shall be elected by and hold office at the pleasure of the board of directors. In addition the board of directors may also appoint one or more vice presidents, and provide that one or more of such vice presidents need not be members of the board of directors, one or more assistant secretaries, and one or more assistant treasurers. Any two or more of such offices, except those of president and secretary, may be held by the same person. Any vice president, except a vice president who is not a member of the board of directors, may exercise any of the powers of the president; any assistant treasurer may exercise any of the powers of the treasurer; and any assistant secretary may exercise any of the powers of the secretary, as provided in these by-laws or as directed by the board of directors, and such officer shall perform such other duties as may be imposed upon them. The compensation and tenure of office of all the officers of the corporation (other than directors) shall be fixed and determined by the board of directors.

ARTICLE VI
PRESIDENT

The board of directors shall, at their first regular meeting, elect one of their number to act as president; and if at any time the president shall be unable to act, the vice president shall act in his place and perform his duties; if there is more than one vice president, the first vice president shall act, and in case of his absence or inability to act, the second vice president shall act, and so on in sequence; if the vice president or vice presidents, from any cause, shall be unable to act, they shall appoint some other member of the board to do so, in whom shall be vested, for

the time being, all the duties and functions of president. No vice president shall ever exercise any of the functions of president unless he is at the time a member of the board of directors.

The president (or person acting as such) shall

[fol. 1851] 1. Preside over all meetings of the shareholders and directors.

2. Sign, as president, contracts and other instruments in writing, if, when, and as directed so to do by the board of directors, which, however, may authorize such contracts and other instruments in writing instead of being signed by the president, to be signed by any officer or person. The president may sign certificates of stock as provided in Article X hereof.

3. Call the directors together when he deems it necessary and shall have, subject to the advice of the directors, direction of the affairs of the corporation; and generally, shall discharge such other duties as may be required of him by the by-laws of the corporation.

ARTICLE VII

SECRETARY

The board of directors shall elect a secretary.

1. It shall be the duty of the secretary to keep a record of the proceedings of the board of directors and of the shareholders. He shall keep the corporate seal of the corporation, and the book of blank certificates of stock, fill up and countersign all certificates issued, and make the corresponding entries in the margin of such book on such issuance, and affix said corporate seal to all papers requiring it. He shall keep a proper transfer book, and a stock ledger in debit and credit form, showing the number of shares issued and transferred by any shareholder, and the dates of such issuance and transfer. He shall discharge such other duties as pertain to his office, or which may be prescribed by the board of directors.

2. Whenever it is provided in these by-laws that notice shall be given either of regular or special meetings of the shareholders, regular or special meetings of the directors, or otherwise, such notice shall be given by the secretary, or by the president, a vice president, or by any person designated by either of them, or by any person who shall have signed the call for such meeting. Any notice which the secretary may give or serve, or act required to be done by him, may with like effect be given or served or done by an assistant secretary.

ARTICLE VIII

TREASURER

The treasurer shall receive and keep all the funds of the corporation and pay them out only on checks or otherwise, as directed by the board of directors, provided, however, the board of directors may provide for a depositary of the funds of the corporation, and may by resolution prescribe the manner in which said funds shall be drawn from said depositary.

[fol. 1852]

ARTICLE IX

BOOKS AND PAPERS

All of the records belonging to the corporation shall at all times, in business hours, be open to the inspection of any director or bona fide shareholder thereof, subject at all times to the authority conferred upon the board of directors by Section 377 of the Civil Code of California.

ARTICLE X

CERTIFICATES OF STOCK

Certificates of stock shall be of such form and device as the board of directors may direct, and shall be signed by the president or a vice president and the secretary or an

assistant secretary. Each certificate shall express on its face its number, date of issuance, the number of shares for which and the person to whom it is issued and such other matters as may be required by law.

The certificate book shall contain a margin on which shall be entered the number, date, number of shares, and the name of the person expressed in the corresponding certificate.

Certificates of stock may be issued prior to full payment, in harmony with any permit issued by the Commissioner of Corporations for that purpose, or as is otherwise allowed by law, but any certificate issued prior to full payment must show on its face what amount has been paid thereon.

ARTICLE XI

TRANSFER OF STOCK

Shares of stock of the corporation may be transferred at any time by the holders, or by power of attorney, or by their legal representatives, by endorsement on the certificate of stock. But no transfer is valid until the surrender of the endorsed certificate. A surrendered certificate shall be delivered up for cancellation before a new one is issued in lieu thereof, and the secretary shall preserve the certificate so cancelled, as a voucher. If, however, a certificate is lost or destroyed, the board of directors may order a new certificate issued as is by law required or permitted.

ARTICLE XII

VOTING

At all corporate meetings each shareholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock, in the manner required by the Civil Code. Such proxy shall be in writing and filed with the secretary.

[fol. 1853]

ARTICLE XIII

INDEBTEDNESS

The board of directors shall have power to incur indebtedness, and the terms and amount thereof shall be entered in the minutes. The board of directors shall have the power to secure said indebtedness, or any obligation or obligations of the corporation, by pledge, mortgage, deed of trust, or other security given upon any property owned by it or in which it has any interest.

ARTICLE XIV

GENERAL MANAGER

The board of directors may, in its discretion, appoint a general manager who shall hold office at the pleasure of the board of directors. Any director or other person may be elected to serve as manager. The manager shall have such authority and shall perform such duties as may be directed by the board of directors.

ARTICLE XV

MISCELLANEOUS

1. *Meetings. Where Held.*

(a) Meetings of the shareholders may be held at the principal office for the transaction of the business of the corporation, or at such other place within the State of California as may hereafter at any time be designated either in its articles of incorporation or by-laws.

(b) Meetings of the board of directors of the corporation, both regular and special, may be held at any place within or without the State of California, as may be from time to time fixed by a quorum thereof, provided, however, that until otherwise so fixed such meetings shall be held at the principal office for the transaction of the business of the corporation.

2. *Notice. When Conclusive.*

An entry made in the minutes of the directors of shareholders, pursuant to resolution or recital, that the notice required by these by-laws, or by law, to be given of such meeting has been given, shall be conclusive upon the corporation, its directors, shareholders, and all other persons, that such notice has been duly given, in proper form and substance, to the proper persons, and for the requisite length of time.

3. *Repeal of Former By-Laws.*

This new code of by-laws is in lieu of all other by-laws and amendments thereto of the corporation.

[fol. 1854]

ARTICLE XVI

SEAL

The board of directors shall provide a suitable seal containing the name of the corporation, the year of its creation, and other appropriate words, and may alter the same at pleasure.

ARTICLE XVII

AMENDMENTS

These by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the shareholders called for that purpose, by the directors, by a vote representing two-thirds of the subscribed shares. The written assent of the holders of two-thirds of the shares is effectual to repeal or amend any by-law, or to adopt additional by-laws.

ARTICLE XVIII

EXECUTIVE COMMITTEE

The board of directors of this corporation may provide for the appointment of an executive committee, determine the number of its members, and its tenure of office, and

may delegate to such committee any of the powers and authority of the board, except the power to declare dividends and to make any changes in the by-laws. Such committee shall be composed of members of the board and shall act only in the intervals between meetings of the board, and shall be subject at all times to the control of the board of directors.

[fol. 1854a]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

Honorable Harry C. Westover, Judge Presiding

No. 333-58 HW Civil

CASE-SWAYNE CO., INC., a corporation, Plaintiff,

vs.

SUNKIST GROWERS, INC., Defendant.

Transcript of Proceedings—November 25, 1964

Los Angeles, California

* * * * * * *

[fol. 1854b] Mr. Beardsley: Mr. Henderson, you have marked as Exhibit 1-A, I believe, the amended Articles of Incorporation and By-Laws of Sunkist Growers, Inc. Have you any objection to those going in evidence? That is your Exhibit 1-A?

Mr. Henderson: Well, if you will offer them, I will not object.

Mr. Beardsley: I offer them.

The Court: They may be received in evidence.

The Clerk: Plaintiff's 1-A admitted in evidence.

* * * * * * *

[fol. 1854c]

Case No. 333-58-HW

CASE-SWAYNE CO., INC.

vs.

SUNKIST GROWERS, INC.

PLAINTIFF'S EXHIBIT 1A

Date Nov 9 1964 No. 1A Identification

Date Nov 25 1964 No. 1A In Evidence

Clerk, U. S. District Court, So. Dist. Calif.
J. Dean, Deputy Clerk

AMENDED ARTICLES OF INCORPORATION AND BY-LAWS

SUNKIST GROWERS, INC.

[fol. 1854d] —INDEX—

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AMENDED ARTICLES OF INCORPORATION

SUNKIST GROWERS, INC.

FIRST: The name of this corporation (hereinafter referred to as "Sunkist") is:

SUNKIST GROWERS, INC.

SECOND: The primary purpose for which Sunkist is formed is to furnish facilities and agencies through which citrus fruits of its members and other producers may be marketed or processed and marketed, and to return to said members or other producers the proceeds of sales, less necessary operating and marketing expenses, on the basis of the quantity or value of citrus fruits marketed for such member or other producer.

In carrying out said primary purpose, Sunkist shall have every power, privilege, right and immunity now or hereafter authorized or permitted by law to a corporation organized or existing pursuant to the provisions of Chapter 4 of Division 6 of the Agricultural Code of the State of California and amendments thereto and substitutions therefor and continuances thereof. Nothing herein contained

shall be deemed to limit the right or power of Sunkist to do any lawful act that the board of directors shall determine.

THIRD: Sunkist is organized and exists as a nonprofit cooperative marketing association, without capital stock, pursuant to the provisions of Chapter 4 of Division 6 of the Agricultural Code of the State of California.

FOURTH: The principal office for the transaction of business of Sunkist is located in the County of Los Angeles, State of California.

FIFTH: The number of directors shall be thirty-two (32); provided, that by-laws may be adopted whereby a different number of directors may be fixed, in which event the number of directors shall be as provided in said by-laws.

SIXTH: As stated in the original articles, the names and addresses of the persons who were to serve as the first directors were:

NAME	RESIDENCE
F. Q. Story	*Alhambra, California*
W. E. Sprott	*Porterville, California*
A. P. Harwood	*Upland, California*
H. E. Cheseboro	*Covina, California*
W. R. Powell	*Glendora, California*
P. J. Dreher	*Pomona, California*
S. J. Beals	*Orange, California*
W. G. Fraser	*Riverside, California*
A. P. Johnson	*Riverside, California*
Frank Scoville	*Corona, California*
E. F. Van Luven	*Colton, California*
W. H. Young	*Duarte, California*
D. Felsenthal	*Los Angeles, California*

—1—

[fol. 1854h] SEVENTH: To provide funds for corporate purposes of Sunkist, revolving funds and other allocated reserves may be established. Such revolving fund or allo-

cated reserve credits shall not be deemed to evidence, create or establish any present property rights or interests, as such terms are herein used, but such credits shall be deemed to evidence an indebtedness of Sunkist payable only as provided in the by-laws. In the event the membership of any member shall terminate for any reason whatsoever, such member shall not thereupon become entitled to demand or receive any interest in the property and assets of Sunkist as herein defined, but shall be entitled only to receive payment of its revolving fund credits and its interest, if any, in other allocated reserves as and when same would have been paid had it remained a member.

EIGHTH: Sunkist is a membership corporation, without shares of stock. It shall have two classes of members, as more particularly defined in the by-laws: (1) Local Associations and (2) District Exchanges. The voting power and property rights and interests of each said class shall be as follows:

1. *Voting Power*—The voting power of members shall be unequal. District Exchanges alone shall have the power to vote for directors. In the election of directors, each District Exchange shall be entitled to as many votes as the number of directors it is entitled to nominate, as prescribed by the by-laws, multiplied by the number of directors to be elected. District Exchanges shall have no other voting powers. Other than in the election of directors, all voting rights of members shall vest in Local Associations. Each Local Association shall be entitled to one (1) vote for each one thousand (1,000) cartons or equivalent (or major fraction thereof) of citrus fruit, fresh and products, marketed by such member through Sunkist as shown by Sunkist records during the average of the three (3) preceding completed fiscal years of Sunkist.

2. *Property Rights.* The property rights and interests of the members of Sunkist shall be unequal. The

District Exchanges as such shall have no property rights or interests. The property rights and interests in Sunkist of Local Associations at any time shall be such part of the entire property rights and interests as the amount of revolving fund credits standing upon the books of Sunkist in the name of such member at that time bears to the total of such credits on said books at such time.

In the event of dissolution or liquidation, any residue that may remain after payment in full of all indebtedness, including that evidenced by revolving fund credits and other allocated reserves, shall be distributed to those persons (other than former members who have been expelled) holding revolving fund credits at the time of commencement of proceedings for liquidation or dissolution, in proportion that the amount of revolving fund credits held by each of them at such time bears to the total amount of such credits.

In the event Sunkist shall at any time determine to transfer the property and assets of Sunkist to a successor association and shall designate such association as the successor association of Sunkist, then the transfer of said property and assets by Sunkist to such successor association shall not be considered a dissolution or liquidation within the meaning of the foregoing paragraph. Such association may be formed or exist under state or federal laws, provided only it shall be in substance a farmers' nonprofit cooperative marketing association. Such successor association may be an association formed or recognized for such purpose, or it may be formed by merger, consolidation, or any corporate reorganization. Property rights and interests of the members of Sunkist shall be recognized and preserved in an equitable manner in such successor association.

NINTH: Sunkist shall have perpetual existence.

[fol. 1854i]

AMENDED BY-LAWS
SUNKIST GROWERS, INC.

General

1.1 *Articles of Incorporation*—The articles of incorporation of Sunkist are hereby made a part of these by-laws and all matters hereinafter contained in these by-laws shall be subject to such provisions in regard thereto, if any, as are set forth in the articles of incorporation. All references in these by-laws to the articles of incorporation shall be construed to mean the articles of incorporation as from time to time amended. The name and purposes of the corporation shall be as set forth in the articles of incorporation.

1.2 *Definitions*—As used in these by-laws, the following terms have the following meanings:

(a) "Fresh fruit" means fruit destined only for fresh consumption and moving in normal fresh fruit channels. The board of directors may from time to time specify other and more detailed definitions not inconsistent herewith.

(b) "Products fruit" means all fruit other than that defined as fresh fruit.

(c) "Fruit" or "citrus fruit" means both fresh and products fruit of all varieties.

(d) "Variety" means any one of the following: Navel oranges, Valencia oranges, Miscellaneous oranges (including tangerines), lemons, grapefruit or limes.

(e) "Carton" means the quantity of the particular fruit involved which is contained in the standard carton in common use for fresh shipments of such fruit, or the equivalent thereof, as determined from time

to time by the board of directors. The board may from time to time establish the relationship or ratio between the carton and other units of weight or quantity.

(f) "Market" or "marketing" means the sale or shipment for purposes of sale as fresh fruit or as products fruit, utilization for products, or other disposition.

(g) "Volume marketed through Sunkist as shown by its records" means the volume, in terms of one thousand (1,000) cartons or equivalent (or major fraction thereof), of the particular fruit involved, marketed by a Local Association or a District Exchange through Sunkist during the average of the three (3) preceding completed fiscal years, on which assessments or deductions for revolving funds and Sunkist charges and expenses have been collected. As soon after the close of a fiscal year as such volume records can be compiled, the average volume of the three (3) preceding completed fiscal years shall be reported to the board of directors and, when approved or accepted by the board, shall be the basis for determination of volume whenever pertinent under these by-laws. Any fruit exempted from the requirement of delivery as provided in By-law No. 9.3 (b) shall not be included in volume as herein defined. In determining such average volume, appropriate adjustments may be made, in such manner as determined by the board of directors upon evidence satisfactory to it, in the case of mergers, consolidations or transfers of growers from a dissolving Local Association and in the case of Local Associations which have marketed through Sunkist for less than three (3) years.

MEMBERSHIP

2.1 *General Organization*—Throughout California and Arizona since the 1880's citrus growers have formed them-

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[fol. 1854j] selves into cooperatives or have constructed their own facilities to pick, pack and market their fruit in fresh or products form. These local packing house organizations have been known and will in these by-laws be referred to as "Local Associations." The Local Associations created regional marketing agencies in common generally known, and in these by-laws referred to, as "District Exchanges." Sunkist was, in turn, formed by the Local Associations and their District Exchanges in order to furnish additional facilities and agencies in maintaining, extending and making more efficient the marketing of the growers' citrus fruit. Sunkist and its member District Exchanges and Local Associations constitute the cooperative marketing system sometimes referred to as the "Sunkist System."

The fundamental purpose of the Sunkist System is to market the growers' citrus fruit in the form received, or in manufactured or other form at the highest return to such growers consistent with their long term interests. In carrying out such purpose, Sunkist shall act as a nonprofit cooperative marketing association. Sunkist may, at the discretion of the board of directors, also market, in the form received or in manufactured or other form, the fruit or products thereof, of nonmembers who are producers, or of any association of such producers, insofar as the same may be done in compliance with federal and state laws and regulations applicable to farmers' marketing cooperatives; but such nonmember business shall not exceed fifty per cent (50%) by value of the total marketing business and shall be handled on the same basis as that transacted for members.

2.2 *Classes of Members*—There shall be two classes of members:

(a) "Local Associations," which shall be persons engaged in the production of citrus fruits or associations of such producers. Such persons or associations must also be members of, or affiliated with, a District Exchange; and

(b) "District Exchanges," each of which shall be a marketing agent in common of its Local Associations.

2.3 *Agreements of Local Associations With Growers*—Each Local Association shall maintain appropriate agreements between itself and its growers which will provide for the delivery to such Local Association of all the fruit covered by such agreements. Each Local Association shall furnish, upon request, to Sunkist and/or to the District Exchange with which it is affiliated, a list of growers then affiliated with said Local Association and a copy of its agreement with growers.

No Local Association shall release any of its growers from such grower agreement (except upon termination of the same by giving of appropriate notice of termination under the terms of said agreement during the regular withdrawal period) without giving to Sunkist and to the District Exchange with which such Local Association is affiliated ten days' notice of such proposed release. At any time within the varietal season that such releases individually or collectively shall total more than five per cent (5%) of the volume of the Local Association by variety, any releases in excess of such percentage must be approved by the District Exchange with which said Local Association is affiliated.

2.4 *Representative of Member*—If any member is other than a natural person, such member may be represented by any individual, associate, officer or manager or member

thereof, duly authorized in a writing filed with the secretary of Sunkist.

2.5 *Membership Contract*—Persons qualified under By-law No. 2.2 may become member of Sunkist by submitting an application for membership, in a form prescribed by the board of directors. When accepted by Sunkist, such application shall constitute a contract between the member and Sunkist, and between the Local Association and the District Exchange with which such Local Association may be affiliated, or between the District Exchange and all Local Associations affiliated with it, for the benefit of all such

[fol. 1854k] parties, and for the benefit of each and every other member of Sunkist. The board of directors shall have the right, in its sole discretion, to refuse to accept such application for membership.

2.6 *Nontransferability of Membership*—No membership shall be assigned or transferred either voluntarily or involuntarily or by operation of law, nor shall any membership or membership rights of a member be assigned, transferred, alienated or encumbered in any manner or by any means whatsoever; provided, however, that nothing herein contained shall be deemed to impair the transferability of revolving fund credits as hereinafter provided in By-law No. 10.8.

2.7 *Termination of Membership*—Any membership in Sunkist shall be terminated upon occurrence of any of the following events:

(a) If the member ceases to be a producer or cooperative association of producers or marketing agent in common of such producers or associations within the meaning of applicable federal and state laws and regulations; or

(b) By death, disbanding or dissolution of the member; or

(c) By notice of termination as provided in the membership contract; or

(d) By expulsion as provided in By-law No. 2.8.

2.8 *Expulsion*—Any member may be expelled by a majority vote of the authorized number of the board of directors for failure to comply with the by-laws or rules and regulations issued thereunder, or by a two-thirds (⅔) vote of the authorized number of directors if termination of such membership is judged to be in the best interests of other members. Before vote upon a proposal to expel any member, such member shall be given notice and a fair and reasonable opportunity to be heard at a regular or special meeting of the board. Any action of the board hereunder shall be final and conclusive. Upon expulsion, all voting and property rights of the member so expelled shall cease and terminate except that such member shall be entitled to receive payment of any outstanding revolving fund or other allocated reserve credits (less any indebtedness to Sunkist) to be paid in the manner and at the time such payment would have been paid had such membership been continued.

Voting Rights

3.1 *Local Associations*—Local Associations shall be entitled to vote upon all questions requiring membership action except the election of directors. All such voting by Local Associations shall be based on volume and each Local Association shall be entitled to one (1) vote for each one thousand (1,000) cartons or equivalent (or major fraction thereof) of the volume of citrus fruit, fresh and products, marketed by such member through Sunkist during the average of the three (3) preceding completed fiscal years of Sunkist, as shown by its records, as provided in By-law No. 1.2 (g). A majority of the total votes cast shall be necessary for any action by members to be effective, except as otherwise provided in By-laws No. 3.2, 4.4, 4.8, 9.4

(b), (d), and (f), and 11.7 (a). In the event any question requiring concurrence of directors representing a specified percentage of volume for board action is submitted to a vote of members, a majority vote thereon to be effective must include the votes of members representing a like percentage.

3.2 *Varietal Voting*—It is recognized that certain questions may from time to time arise relating solely to the promotion of a particular variety of fruit and the assessment relating thereto. To the extent that such questions, as herein more particularly specified, are referred to the members for vote under this by-law, either at a meeting of members or by mail, the following provisions shall apply:

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[fol. 1854 1] (a) *Procedure*—At the request of Local Associations representing one-fifth (1/5) of the voting power of a particular variety or at the request of one-third (1/3) of the authorized number of directors, any question subject to varietal voting shall be submitted to a vote of Local Associations on a varietal basis. The affirmative vote of three-fourths (3/4) of the voting power represented by such variety shall be binding upon all members insofar as it concerns the promotion of the variety involved and the assessment relating thereto.

(b) *Varietal Questions*—Voting by Local Associations shall be on a varietal basis on any question relating to the appropriation or use of funds for advertising, promotion or research to be raised solely by assessing a single variety but nothing herein contained shall be construed to authorize varietal voting on assessments resulting from an allocation between varieties of the general cost of maintaining any department or facility of Sunkist for the use of more than one variety.

3.3 *District Exchanges*—District Exchanges shall have the exclusive power to nominate and elect directors but shall have no other voting rights. Each District Exchange shall nominate only as many directors as it shall be entitled to under By-laws No. 5.2. Each District Exchange shall be entitled to cast votes for election of directors in accordance with the following formula: The number of directors which it is entitled to nominate under By-law No. 5.2 multiplied by the number of directors to be elected.

3.4 *Proxies*—Any member, or its duly authorized representative appointed under By-law No. 2.4, entitled to vote at a membership meeting or execute consent shall have the right to do so either in person or by proxy, which proxy shall be in writing executed by the member or its duly designated representative and filed with the secretary of Sunkist. No proxy shall be valid after the expiration of eleven (11) months from its date, unless it specifies the length of time it shall continue in force, which shall in no event be for more than three (3) years.

3.5 *Voting by Mail*—Whenever so authorized by these by-laws or by the board of directors, a membership vote of Local Associations may be conducted by mail, without the necessity of a meeting. To be effective, the total vote cast by mail on any question shall be not less than the number required to constitute a quorum had such vote been taken at a meeting of members.

Meetings of Members

4.1 *Place of Meetings*—All meetings of members shall be held at the principal office of Sunkist or at such other place in the County of Los Angeles as may be designated by the board of directors.

4.2 *Regular Annual Meeting*—A regular annual meeting of all Sunkist members shall be held at 10 o'clock a.m. on the third Wednesday in December of each year. At such meeting directors shall be elected, reports of the affairs of

Sunkist shall be considered and any business may be transacted which is within the power of the members.

4.3 *Notice of Regular Annual Meeting*—Ten days' notice of each regular meeting of the members shall be given as provided in By-law No. 11.2. Such notice shall state the place, the day and the hour of the meeting and that the purposes thereof are the election of directors and the transaction of such other business as may come before the meeting.

4.4 *Special Meetings*—Except in those instances where a particular manner of calling a meeting or obtaining a vote of members is prescribed by law or in these by-laws, a

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[fol. 1854m] special meeting of all members or of the members of either class may be called at any time by the President, or on demand of one-third (1/3) of the directors, or by members entitled to exercise one-fifth (1/5) of the voting power. No business shall be transacted at a special meeting other than such as is included in the purposes stated in the notice.

4.5 *Notice of Special Meeting*—Notice of each special meeting shall be given in the same manner as for annual meetings. Notice of any special meeting shall specify the purposes of the meeting, in addition to the place, the day and the hour of such meeting.

4.6 *Adjournment and Notice*—Any members' meeting, whether or not a quorum is present, may be adjourned from time to time by a vote of the majority of the voting power of the members present in person or by proxy, but in the event there is not a quorum initially present at any members' meeting, no other business may be transacted. When any meeting of members is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise, it shall not be necessary to give any notice of adjournment other than by announcement at the meeting at

which adjournment is taken nor shall it be necessary to give any notice of the business to be transacted at an adjourned meeting.

4.7 *Quorum*—At any meeting of all members, or of any class of members, the presence in person or by proxy of persons entitled to vote a majority of the voting power entitled to vote at such meeting shall constitute a quorum for the transaction of business, except as otherwise may be required by law. The members present at a duly called and held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

4.8 *Consent of Absentees*—The transactions of any meeting of members, either regular or special, however called and noticed, shall be as valid as though had at a meeting duly held upon regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Directors.

5.1 *Number and Qualification*—The authorized number of directors of Sunkist shall not be less than thirty (30) nor more than thirty-three (33). Until changed by the board of directors within the foregoing limits, the authorized number of directors shall be thirty-two (32). A director shall be either a citrus producer who markets fruit through Sunkist, or the duly authorized representative of such a producer.

5.2 *Selection of Directors*—Each District Exchange shall be entitled to nominate one (1) director. Additional di-

rectors may be nominated by District Exchanges, on the basis of the volume of all fruit marketed through Sunkist as shown by its records for the average of the three (3) preceding fiscal years, as provided in By-law No. 1.2 (g), in accordance with the following formula:

Each District Exchange having a percentage of such volume above three and six-tenths per cent (3.6%) and less than nine and six-tenths per cent (9.6%)—one (1) additional director;

Each District Exchange whose percentage of such volume is nine and six-tenths per cent (9.6%) or more but less than fifteen and six-tenths per cent (15.6%)—two (2) additional directors;

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[fol. 1854n] Each District Exchange whose percentage of such volume is fifteen and six-tenths per cent (15.6%) or more but less than twenty-one and six-tenths per cent (21.6%)—three (3) additional directors; and

Each District Exchange whose percentage of such volume is twenty-one and six-tenths per cent (21.6%) or more—four (4) additional directors.

5.3 *Election and Term of Office*—The directors shall be elected annually by District Exchange members at the time of the regular annual meeting of the members, but if any such annual meeting is not held, or the directors are not elected thereat, the directors may be elected at any special meeting of District Exchange members held for that purpose. Any director shall hold office until his successor is elected.

5.4 *Vacancies*—Vacancies in the board of directors shall be filled by the other directors in office upon nomination and certification by the appropriate District Exchange; and such person shall hold office until his successor is elected.

5.5 *Place of Meetings*—Meetings of the board of directors shall be held at the principal office of Sunkist, or at any other place within or without the State of California which has been designated by the board or by written consent of all members of the board.

5.6 *Organization Meeting*—Immediately after each annual election of directors, the newly elected directors shall hold a regular meeting for the purpose of organization, election of officers, and the transaction of other business. Notice of such meeting is hereby dispensed with.

5.63 *Regular Meetings*—In addition to the regular organization meeting, a regular meeting of the board of directors shall be held at 9:30 o'clock a.m. on the first and third Wednesdays of each month.

5.65 *Special Meetings*—A special meeting of the board of directors shall be held whenever called by the president, or by any vice-president in the absence of the president, or by one-third (⅓) of the directors. Any and all business may be transacted at a special meeting.

5.7 *Notice of Meetings of Directors*—No notice of regular meetings of the directors need be given. Notice of each special meeting shall be given pursuant to By-law No. 11.2, showing the time and place, at least two (2) days prior to the time of such meeting.

5.75 *Adjournment*—Notice of time and place of holding an adjourned meeting need not be given to absent directors, if the time and place be fixed at the meeting adjourned and the adjournment is for a period of not more than seven (7) days.

5.8 *Waiver of Notice*—The transactions of any meeting of the board of directors however called and noticed or wherever held, shall be as valid as though had at a meeting duly held, after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the directors not present signs a written waiver of notice,

a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

5.85 *Quorum*—A majority of the authorized number of directors shall be necessary to constitute a quorum for the transaction of business. However, in the absence of a quorum of directors who have been previously regularly seated, a quorum for the purpose of accepting resignations of directors and filling such vacancies shall be one-third (⅓) the authorized number of directors.

5.9 *Fees and Expenses*—Directors shall not receive any stated salary for their services as directors, but by resolution of the board, a fixed fee plus expenses may be paid for attendance at any meeting of the board or at any committee meeting.

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POWERS OF DIRECTORS

6.1 *General Powers*—Subject to the limitations of the articles of incorporation, of the by-laws and of the statutes of the State of California relating to action which shall be authorized or approved by members, all corporate powers shall be exercised by or under the authority of, and the business and affairs of Sunkist shall be controlled by, the board of directors. Without prejudice to such general powers, but subject to the same limitations, it is expressly declared that the board of directors shall have the following powers, to wit:

(a) To appoint and remove, at pleasure, all officers, agents and employees of Sunkist, prescribe their duties, fix their compensation, and require from them, if deemed advisable, security for faithful service.

(b) To conduct, manage and control the affairs and business of Sunkist and to make rules and regula-

tions not inconsistent with the laws of the State of California, the articles of incorporation or by-laws, for the guidance of its officers and the management of its affairs.

(c) To borrow money and incur indebtedness for the purposes of Sunkist, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of indebtedness and securities therefor, and to do every act and thing necessary to effectuate the same.

(d) To establish grades for fruit and for products with rules and regulations pertaining thereto, and to prescribe the standards of quality of fruit and products to be marketed under such grades, and permit Local Associations and District Exchanges to pack or deliver their fruit under such grades upon compliance with such prescribed standards and with all rules and regulations established pursuant hereto.

(e) To prescribe rules and regulations in connection with the use of any trademarks, trade names, brands, patents or copyrights owned or controlled by Sunkist and any such rules or regulations may be changed from time to time.

6.2 *Charges and Expenses*

(a) *Of Sunkist*—All charges and expenses of Sunkist, including deductions for such reasonable reserves as may from time to time be prescribed by the board of directors and including a subscription to "The California Citrograph," shall be met by assessments or deductions upon District Exchanges or Local Associations. The method, amount, manner and time of assessment or deduction shall be fixed and determined from time to time by the board of directors. Each District Exchange or Local Association shall

pay to Sunkist when due the amount of any assessments or deductions hereunder.

(b) *Of District Exchanges*—All charges and expenses of District Exchanges, including Sunkist assessments and deductions for such reasonable reserves as may from time to time be prescribed by their respective boards of directors, shall be met by assessments or deductions upon Local Associations. The method, amount, manner and time of assessment or deduction shall be fixed and determined from time to time by the board of directors of each District Exchange. Each Local Association shall pay to the District Exchange with which it is affiliated when due the amount of any assessments hereunder and authorizes Sunkist or District Exchange to deduct from the proceeds of sale of fruit or products marketed for it the amount of any such assessment and any other amounts due District Exchange or Sunkist from such Local Association.

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[fol. 1854p] (c) *Refunds*—Any amount by which the marketing or other assessments or deductions hereunder exceed the actual cost (including in such cost any reserves prescribed as provided in these by-laws) shall be refunded to the persons from whom collected as promptly as accounting procedure permits.

(d) *Set-off*—Any amount due Sunkist from any member or patron as an assessment, deduction or otherwise may be set off against any amount which Sunkist is or may become obligated to pay such person.

COMMITTEES OF THE BOARD

7.1 *Products Executive Committee*—A Products Executive Committee is hereby established. It shall be composed of fifteen (15) directors but in no event to exceed one-half (½) of the authorized number of directors.

There are hereby delegated to said Products Executive Committee all of the functions and powers of the board relating to or directly affecting products operations, including products sales, subject to the direction and control of the board. It is the purpose of these by-laws to afford substantial autonomy to said committee in the operation of the products portion of Sunkist business.

7.2 *Other Committees of the Board*—Other committees may be established by resolution of the board specifying the number of members and prescribing the committee functions and duties. Such other committees may include individuals who are not members of the board.

Officers and Management

8.1 *Corporate Officers*—The officers of Sunkist shall be elected by the board of directors and shall be a president, one (1) or more vice-presidents, a secretary and a treasurer. The board may also appoint one (1) or more assistant secretaries or assistant treasurers and any other corporate officers which the board of directors may see fit in its discretion to designate. The president and vice-president or vice-presidents shall be elected by the directors from their number. One (1) person may hold two (2) or more offices except that the offices of president and secretary or any vice-president and secretary may not be held by the same person.

8.2 *Election and Term of Office*—Officers shall be elected annually at the organization meeting of the board of directors following the annual meeting of members, or at such other time as the board of directors shall determine. Unless sooner removed by the board of directors, or unless they resign or become disqualified, all officers shall hold office until their successors are chosen and have qualified. Any officer, whether elected or appointed by the board of directors, may be removed at any time by a majority vote of the authorized number of directors.

8.3 *Powers and Duties*—Subject at all times to the control and direction of the board of directors, each officer shall have and exercise the powers and duties usual to his office.

8.4 *Management*—The board of directors shall also elect a general manager who shall have administrative authority over all personnel in the employ of Sunkist. Upon the recommendation of the general manager, the board shall also appoint an assistant general manager and may appoint such other assistants or department heads as the management and the board deem necessary or advisable to properly carry on the business of Sunkist. Their duties, responsibilities, and authorities shall be prescribed by the general manager. Any person elected or appointed under this by-law is subject to removal at any time by a majority vote of the authorized number of directors.

[fol. 1854q]

MARKETING

9.1 *Marketing Obligation*—Each Local Association shall market all of the fresh fruit subject to its control through the District Exchange with which it is affiliated. Each District Exchange shall market through Sunkist all of the fruit subject to its control. Each Local Association shall deliver to Sunkist all of the products fruit subject to its control. Sunkist shall market all of said fruit both fresh and products and shall determine the methods of marketing to be adopted in any or all markets and the types of containers and methods of packaging to be used.

9.2 *Marketing Agency Created*—Each Local Association and District Exchange designates and appoints Sunkist as its agent and the agent of its growers in all matters concerning the marketing of its fresh fruit, and the processing and marketing of its products fruit. Full power and authority are conferred upon Sunkist as such agent to conduct its marketing activities in such manner as it, in its sole discretion, determines to be for the best interests of

all of its members. As such agent, Sunkist may inspect any records pertaining to the disposition of fruit maintained by or for any member, including any or all records maintained by any federal or state marketing committee or board pertaining to such member.

9.3 *General Marketing Plan*—In carrying out the basic purpose of marketing the growers' citrus fruit at the highest return to the growers, the Sunkist System has adopted the following general marketing plan:

(a) *Fresh Fruit*—Sunkist shall develop and determine the market opportunities for each variety of citrus fruit to be marketed by its members. Sales shall be made through the facilities and agencies furnished by Sunkist.

(b) *Products Fruit*—Products fruit shall be delivered to Sunkist by each Local Association, f.o.b. the packing house. Thereafter Sunkist shall market such products fruit either in the form received or in manufactured form. Products grapefruit from Local Associations located in Arizona and products oranges from Local Associations located in the Yuma area of Arizona are excepted from the requirements of delivery to Sunkist.

9.4 *Regulations Relating to Marketing Fresh Fruit*—The following provisions relate and are applicable with regard to the marketing of fresh fruit by Sunkist:

(a) *Reserved Rights*—Except as provided in By-law No. 9.4. (f), each Local Association reserves to itself the right to determine to what markets it shall ship, where its fruit shall be sold, and, except at auction points, the price it is willing to receive.

Each Local Association hereby delegates said reserved right to the District Exchange with which it is affiliated; provided, however, that any Local Association may at any time and from time to time

terminate such delegation and itself exercise said reserved right for such period of time as it may deem proper, or redelegate said reserved right to such District Exchange.

(b) *Quotas and Allocation*—Sunkist may, by a majority vote of the authorized number of directors determine the maximum amount of fresh fruit to be marketed currently and allocate the opportunity to ship equitably among Local Associations; provided, however, that said majority includes directors representing eighty-five per cent (85%) of the volume marketed through Sunkist, as shown by its records, of the variety (both fresh and products) under consideration. Such allocation shall be binding upon District Exchanges and Local Associations.

(c) *Contact with Buyers*—District Exchanges and Local Associations shall not solicit business from the trade or employ any solicitor or agent, or correspond with

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[fol. 1854r] any buyer for the purpose of promoting the sale of their fresh fruit. All prices, quotations and allowances shall be issued and distributed solely by Sunkist. Copies of correspondence with district managers in the markets by any District Exchange must be sent to Sunkist; and by any Local Association to Sunkist and to the District Exchange with which it is affiliated. District Exchanges shall be entitled to receive, upon request, copies of Sunkist correspondence relating to their fruit.

(d) *Transportation*

(1) *Routing*—Sunkist shall have authority to specify the route of all shipments of fresh fruit. Any Local Association may at any time and from time to time terminate such authority as to it

or again give Sunkist such authority. Sunkist shall be notified immediately in writing through the District Exchange with which such Local Association is affiliated of any such termination of such authority, and unless so notified Sunkist may exercise the same.

(2) *Facility*—Sunkist may, by a majority vote of the authorized number of directors, which majority shall include directors representing seventy-five per cent (75%) of the volume marketed through Sunkist, as shown by its records, of the variety (both fresh and products) under consideration, determine the transportation facility—whether by rail, by water or otherwise.

(3) *Pooling of Charges*—Transportation costs, including but not restricted to costs of refrigeration and other protective services, incurred in connection with the movement of fresh fruit destined for points outside the state of origin, may in the manner and to the extent determined by a majority vote of the authorized number of directors, which majority shall include directors representing seventy-five per cent (75%) of the volume marketed through Sunkist, as shown by its records, of the variety (both fresh and products) under consideration, be pooled equitably in relation to the different types of refrigeration and other protective services and paid by charges or assessments levied and apportioned as the board of directors may determine.

(e) *Losses and Customer Claims*—The only losses for which Sunkist shall be responsible to District Exchanges or Local Associations are losses arising from the financial failure or default of purchasers after having positively accepted the fruit, which default is not due to complaint of the buyer concerning the quality, condition or grade of the fruit. Such losses

shall be charged as a part of the general marketing expense and paid in the method, amount and manner determined by the board of directors. In case of any controversies with customers wherein, in the judgment of the board of directors, the collective interest of members is involved, the judgment of said board as to settlement of such dispute shall be final and binding upon the Local Association which furnished the fruit.

(f) *Pooling*—Pools for fresh fruit may be established by the board of directors on a varietal basis and may include fruit produced in or destined for any particular geographical section, or fruit conforming or not conforming to specified standards of quality and/or size or fruit for Government use. Each Local Association shall have the right to determine whether or not it will provide fruit for each such pool. Sales of fruit eligible for any such pool shall not be made in competition with pool fruit. The rights reserved under By-law No. 9.4 (a) shall be limited to the extent provided in this By-law No. 9.4 (f). Any pool so established shall be pursuant to a pooling plan to be prescribed by the board of directors. Such plan shall specify the conditions of eligibility

[fol. 1854s] of fruit, the methods of operation and all rules and regulations in connection therewith, which shall include provision for equitable allocation of the marketing opportunity among those desiring to participate. Such pools may be established only by a majority vote of the authorized number of directors, which majority must include directors representing seventy-five per cent (75%) of the volume marketed through Sunkist, as shown by its records, of the variety or varieties (both fresh and products) in the producing area under consideration.

(g) *Obligation to Distribute Proceeds*—All proceeds of sales of fresh fruit, after deduction of freight and other charges directly allocable, and after any deductions authorized pursuant to By-law No. 6.2, shall be remitted to the appropriate District Exchanges and by them to the appropriate Local Associations as rapidly as collection and accounting procedures permit.

9.5 *Regulations Relating to Marketing Products Fruit*—The following provisions relate and are applicable with regard to the marketing of products fruit by Sunkist:

(a) *Power and Control of Sunkist in Handling Products Fruit*—Sunkist may sell and market the products fruit of its members and other producers or the products produced therefrom, pledge or otherwise hypothecate the same or any part thereof, transfer title thereto, and collect and receipt for the proceeds in its own name exclusively, or in the name of any subagent. No member by virtue of having furnished any fruit shall exercise any control over Sunkist with regard to either the processing or marketing of said fruit, or the conduct of the business of Sunkist, in all of which matters Sunkist may, in good faith, use its own discretion and judgment, free from any direction by such member. The member shall not be directly liable under any rules of agency on account of any contract, or contracts, made by Sunkist in carrying on its business of marketing products fruit.

(b) *Pooling*—Sunkist shall establish pools for the handling, processing and marketing of all products fruit. Each products fruit pool shall include such varieties or portions thereof as Sunkist may determine. Any pool so established shall be pursuant to a pooling plan to be prescribed by the board of directors.

(c) *Delivery of Fruit and Freight Regulation*—Sunkist may establish, maintain, and enforce an inspection

for quality, and reject such products fruit as is not acceptable for products purposes, and may charge back freight thereon to the shipper. Sunkist shall govern the collecting and assembling of products fruit for shipment to Sunkist and may prorate shipments if supply exceeds capacity of available facilities. Sunkist shall provide for the equitable handling of freight charges on products fruit in order that no shipper may be at a disadvantage by reason of his location with reference to the location of the processing facilities of Sunkist.

(d) *Obligation to Return Net Proceeds*—All proceeds of sales, less necessary operating and marketing expenses, shall be returned to the persons entitled thereto on the basis of the quantity or value of products fruit furnished. Such proceeds shall be so returned as promptly as the collection thereof, the financial position of Sunkist and accounting procedure may permit; provided, however, that any amounts assessed or deducted on the basis of the quantity or value of fruit furnished as additions to reserves (other than so-called valuation reserves, such as reserves for depreciation, bad debts, etc., which in accordance with recognized accounting practices are deductions under Section 23 of the Internal Revenue Code of 1939) in any fiscal year shall be apportioned on the books of Sunkist, to the persons contributing thereto and an appropriate certificate

[fol. 1854t] or notice of such assessment or deduction (including the dollar amount thereof) shall be issued and delivered to each such person within the period specified by law following the close of each fiscal year.

9.6 *Power Conferred by Statutes*—Sunkist shall have and in its discretion may exercise on an equitable basis on behalf of District Exchanges and Local Associations any and all powers relating to the marketing of fruit and products that Sunkist, District Exchanges and Local Associations are or may be hereafter authorized by state or federal statutes or by order or regulations based thereon to exercise. Any Local Association or District Exchange may, as to it at any time and from time to time, terminate the authority conferred upon Sunkist by this by-law or again give such authority to Sunkist. Sunkist shall be notified immediately in writing of any such termination of said authority, and unless so notified, Sunkist may exercise any of the powers referred to in this by-law.

9.7 *Warranty*—Each Local Association and each District Exchange warrants to Sunkist that it has the right to receive, pack and deliver for marketing and to market through Sunkist all of the fruit which it may deliver. Each of said members further warrants that said fruit and the disposition thereof shall comply with all state and federal statutes and regulations applicable thereto.

9.8 *Liquidated Damages for Member's Breach*—In the event that any member shall sell, market or dispose of any of the fruit that is to be marketed by or through Sunkist under the provisions of these by-laws other than through the agency of Sunkist, such act will injure Sunkist and its members in an amount that is, and will be, impractical and extremely difficult to determine and fix. The said damages are, therefore, fixed at fifty cents (50¢) per carton on all fresh fruit and fifty dollars ($50) per ton for all products fruit that is sold, marketed or disposed of contrary to the provisions of these by-laws. The member so violating the by-laws agrees to pay, and shall pay, said amount to Sunkist as liquidated damages, and in default of payment thereof to Sunkist upon demand, the same may be recovered in an action in any court of competent jurisdiction in the name of Sunkist, in which case Sunkist shall recover from

the member in addition to said liquidated damages, all costs, premiums for bonds, expenses and fees, including attorneys fees, in such action.

Revolving Fund

10.1 *Revolving Fund Created*—A fund, to be known as the "Sunkist Revolving Fund," is hereby created for the purpose of furnishing an equitable basis, in accordance with established cooperative practice, for acquiring capital to operate the business of Sunkist with contributions related to the use of facilities provided and to shipments of citrus fruit by the members and other patrons. Such revolving fund is a continuation and consolidation of the three revolving funds (A, B and C), heretofore maintained by Sunkist, and the revolving fund heretofore maintained by Exchange Lemon Products Company.

10.2 *Outstanding Credits*—Such revolving fund shall initially consist of the credits and priorities outstanding, as of the beginning of the 1958-59 fiscal year, in said previously existing funds, as shown by the books and records of Sunkist and Exchange Lemon Products Company. All such credits and priorities presently allocated to District Exchanges shall be reallocated to the appropriate Local Associations and accounts hereafter shall be kept with the Local Associations with copies to the appropriate District Exchanges.

10.3 *Revolving Fund Rates*—Additions to said revolving fund shall be made by assessments or deductions, as determined by the board of directors from time to time, on fruit marketed by or through Sunkist at the following rates:

(a) *Lemons*—Two cents (2¢) on each carton or equivalent of all lemons shipped in fresh fruit channels and an amount to be determined by the board of directors from time to time on the basis of quantity

[fol. 1854u] or value of products lemons, subject to a maximum of five dollars ($5.00) per net ton.

(b) *Oranges and Grapefruit*—One cent (1¢) on each carton or equivalent of all oranges and grapefruit shipped in fresh fruit channels and fifty cents (50¢) per net ton on products oranges and grapefruit, subject to a maximum of one cent (1¢) per carton or equivalent on all such fruit, fresh or products; and an amount to be determined by the board of directors, from time to time, as a percentage of the net sales value of orange and grapefruit products, subject to a maximum of seven and one-half per cent (7½%). "Net sales value" as used herein means the amount (not reduced by the amount of this assessment) determined from estimated final values established by the board of directors for each pool for products oranges and grapefruit.

Subject to the maximum rates specified, the board of directors may change the foregoing rates from time to time, but the maximum rates may be changed only by amendment of these by-laws. Fruit exempted, pursuant to By-law No. 9.3 (b) from the requirement of delivery to Sunkist shall be exempted from the foregoing assessments. Collections may be made through the District Exchanges but all credits shall be entered in the accounts of the respective Local Associations.

10.4 *Nature of Revolving Fund Credits*—All such revolving fund credits shall constitute indebtedness of Sunkist to the respective persons to whom credited, but such indebtedness shall be paid solely upon the conditions and at the time and times hereinafter provided. No interest shall be payable on any such credits. Such revolving fund credits shall be subordinated to all other indebtedness of Sunkist, secured or unsecured, as provided in By-law No. 10.95.

10.5 *No Segregation of Funds*—The monies deducted or assessed for the revolving fund may be commingled with

and used for corporate purposes as other monies belonging or coming to Sunkist are used. Nothing herein contained shall be deemed to require that any specific monies or funds be segregated, or designated, or marked, or set apart, or held for the revolving fund, nor shall the revolving fund be deemed a trust fund held for the owners of revolving fund credits.

10.6 *Losses Chargeable Against Credits*—In the event Sunkist sustains a substantial loss, from any cause whatever, the board of directors may, in its sole discretion, charge all or any part of said loss to any one or more of the following accounts:

(a) Current operating expenses;

(b) Revolving fund and/or other allocated reserve credits for the fiscal year in which such loss was incurred or to which the loss was attributable;

(c) All revolving fund and/or other allocated reserve credits for all years.

In the event said loss is charged to revolving fund or other allocated reserve credits, the same shall be charged ratably and proportionally against all credits in the varietal or other class charged. Notice of such charge against revolving fund or other allocated reserve credits shall be given within the period specified by law after the close of the fiscal year in which such loss is charged, to the persons in whose names the credits stand on the books of Sunkist. Anything in these by-laws to the contrary notwithstanding, there shall be payable in respect to revolving fund and other allocated reserve credits only the difference between the amount of the credit originally entered and the portion of such loss charged thereto.

The board of directors shall have the power to determine when a substantial loss has occurred, and its determination shall be conclusive. In making such determination, the

board may consider among other factors, losses from bank suspensions, uncollected accounts, fire, explosion, accident

[fol. 1854v] or other calamity, unforeseen marketing conditions, excessive or high manufacturing, operating or overhead costs due to crop failure or below normal production, inadequate depreciation charges, and unusual or unforeseen expenses, including taxes, assessments, fines, penalties and claims arising under any present or future law.

10.7 *Revolving Fund Statement*—Within the period specified by law after the close of each fiscal year, Sunkist shall furnish each patron of Sunkist during said fiscal year with a statement showing the dollar amount of revolving fund credits standing on the books of Sunkist in the name of such patron and the amount thereof which accrued during said fiscal year. In the event of a loss chargeable against revolving fund credits pursuant to By-law No. 10.6, the same shall be reflected on the revolving fund statement, which shall be furnished to all holders of revolving fund credits affected by such loss, whether or not they were patrons during said fiscal year.

10.8 *Assignment or Transfer*—Revolving fund credits may be assigned or transferred at any time by execution of a written assignment thereof, on a form to be provided by Sunkist, and delivery thereof to the secretary of Sunkist; provided, however, that no such transfer shall be complete until entered upon the books of Sunkist.

10.9 *Redemption*—When the aggregate of all outstanding unpaid credits of the revolving fund equals $17,000,000, or at such earlier time as the board of directors may determine, subsequent additions shall be used to revolve out or redeem the oldest unpaid revolving fund credits. All such credits from the same fiscal year shall have the same priority and if funds available are insufficient to pay all credits

for a given fiscal year, a pro rata payment may be made against all credits for that year or payment may be deferred until funds are available to pay in full all credits for such year.

10.95 *Payment on Dissolution*—In the event of dissolution or liquidation of Sunkist, all unpaid revolving fund and other allocated reserve credits shall be deemed due without regard to priority of revolution, but shall not be paid in any part until all other indebtedness of Sunkist has been paid or adequately provided for. In the event funds are insufficient to cover all such credits and reserves, payment of revolving fund and other allocated reserve credits shall be on a pro rata basis.

MISCELLANEOUS

11.1 *Principal Office*—The principal office for the transaction of business of Sunkist is hereby fixed and located at 707 West Fifth Street, Los Angeles, California.

11.2 *Method of Giving Notices*—Whenever in these bylaws notice is required to be given it may be given by one (1) or more of the following methods:

(a) Delivered personally; or

(b) Written notice either deposited in the mails postage prepaid or sent by telegraph, addressed to the residence or place of business of the member or director, as the same shall appear on the books of Sunkist.

11.3 *Effect of Holiday*—If the time designated herein for any meeting should fall upon a legal holiday, then any such meeting shall be cancelled unless another date is fixed by the board of directors and notice thereof given in the manner provided for a special meeting.

11.4 *Indemnity*—District Exchanges and Local Associations shall severally indemnify and save Sunkist harmless against all loss, damage, injury, liability, cost and/or ex-

pense of whatsoever nature suffered or to be suffered by Sunkist by reason of any claim or claims asserted or made to or against Sunkist by reason of any act of commission or omission of such member.

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[1854w] 11.5 *Fiscal Year*—The fiscal year of Sunkist extends from November 1 to October 31 following.

11.6 *Seal*—The board of directors shall provide a suitable seal containing the name of Sunkist, the date of its incorporation and other appropriate words, and may alter the same at pleasure.

11.7 *Amendments*—These by-laws may be amended or repealed or new by-laws adopted as follows:

(a) By vote or written assent of members entitled to exercise two-thirds (⅔) of the voting power, except that an amendment or repeal of the following by-laws shall require the greater percentages of such voting power, as follows:

By-law Number		Percentage Required
9.4(d) (2)	(Transportation—Facility)	75
9.4(d) (3)	(Transportation—Pooling of Charges)	75
9.4(f)	(Pooling)	75
7.1	(Products Executive Committee)	80
9.4(b)	(Quotas and Allocation)	85
9.4(a)	(Reserved Rights)	90
11.7	(Amendments)	90

or

(b) By vote of two-thirds (⅔) of the authorized number of directors: except that the board may not amend By-laws No. 3.1, 3.2, 3.3, or 3.5 (relating to voting

rights of members), 5.1 or 5.2 (relating to number, qualification and selection of directors) except that the board may amend By-law No. 5.1 solely for the purpose of establishing the exact authorized number of directors within the limits therein prescribed, such exact authorized number to be computed solely in accordance with the formula contained in By-law No. 5.2; or any of the by-laws specified in By-law No. 11.7 (a) as requiring a percentage of voting power greater than two-thirds (⅔); provided, however, that the power of the board of directors to adopt, amend or repeal by-laws may be revoked at any time by vote or written assent of Local Association members entitled to exercise a majority of the voting power.

11.8 *Effective Date of By-laws*—The effective date of these by-laws is and shall be 1958, and all by-laws heretofore adopted are hereby repealed and superseded by these by-laws.

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[fol. 1854x]

Dated .....

.....
Applicant

By .....

(Seal) Address .....

.....

The foregoing application is hereby accepted this ..... day of ....., 19.....

SUNKIST GROWERS, INC.

(Seal) By .....
Secretary

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[fol. 1854y] SUNKIST GROWERS, INC.

APPLICATION FOR MEMBERSHIP

The undersigned hereby applies for membership in Sunkist Growers, Inc., a California nonprofit cooperative marketing corporation, { as a Local Association member / as a District Exchange member } and hereby assents to, adopts, approves, agrees to be bound by, and ratifies as and for the articles of incorporation and by-laws of Sunkist, all of those provisions set forth and contained in the printed booklet to which this membership application is, or was, attached, together with all amendments thereto, if any there be, and any amendments hereafter adopted. Receipt of a copy of said printed booklet is hereby acknowledged.

This application, when accepted by Sunkist Growers, Inc., shall constitute the membership contract (specified in By-law No. 2.5) between applicant and Sunkist and between applicant { Local Association and District Exchange with which applicant is affiliated / District Exchange and Local Associations affiliated with applicant } for the benefit of all such parties, and for the benefit of each and every other member of Sunkist.

Said membership contract shall be and continue in effect until terminated as hereinafter provided but in no event for a longer period of time than is now or may hereafter be permitted by law:

(1) As provided for in By-law No. 2.7(a) or (b) or 2.8; or

(2) By delivery of written notice mailed during the last fifteen days of September of any year, such notice to be effective October 31 of such year, as follows:

(a) By any Local Association to the District Exchange with which it is affiliated and to Sunkist;

(b) By District Exchange to Local Association affiliated with it, and to Sunkist, in which event the Sunkist membership of such Local Association shall remain in full force and effect; provided, however, that said Local Association's membership may be terminated by notice to Sunkist or by Sunkist to said Local Association within ten (10) days after the receipt of the notice from the District Exchange. In the event the Local Association's membership remains in effect, such Local Association shall be affiliated with and market its fruit through another District Exchange; or

(c) By and District Exchange to Sunkist, in which event the Sunkist membership of the Local Association affiliated with such District Exchange shall remain in full force and effect, unless such Local Associations give the notice of termination herein specified. Each such Local Association shall be affiliated with and market its fruit through another District Exchange;

(d) By Sunkist to a District Exchange or to a Local Association.

[fol. 2110]

[Stamp—Lodged—Mar 1—1965—Clerk, U.S. District Court —Southern District of California—(illegible)—Deputy]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 333-58 H W

CASE-SWAYNE CO., INC., Plaintiff,

vs.

SUNKIST GROWERS, INC., Defendant.

JUDGMENT—Lodged March 1, 1965 and entered March 2, 1965

This action came on for trial before the Court and a jury, the Honorable Harry C. Westover, District Judge, presiding, and the plaintiff having presented its case and rested, and the defendant having made a Motion for a Directed Verdict, and the Court having determined that there is no evidence which entitles the plaintiff to take its case to the jury, and that said motion should be granted, and having granted said motion, now makes the following

Judgment

It Is Ordered and Adjudged:

That plaintiff, Case-Swayne Co., Inc., take nothing, that the action be dismissed on the merits, and that defendant [fol. 2111] Sunkist Growers, Inc. recover of the plaintiff Case-Swayne Co., Inc. its costs of suit herein, taxed at $1327.71.

Dated at Los Angeles, California, this 2nd day of March, 1965.

Harry C. Westover, United States District Judge.

[File endorsement omitted]

[fol. 2111a]

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 20,070

CASE-SWAYNE CO., INC., a corporation, Appellant,

vs.

SUNKIST GROWERS, INC., a corporation, Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

OPINION—November 21, 1966

Before: Jertberg and Ely, Circuit Judges, and Jameson, District Judge.

JAMESON, District Judge:

This is an action seeking treble damages under section 4 of the Clayton Act (15 U.S.C. § 15)[1] for alleged monopoly and attempt to monopolize in violation of sections 1 and 2 of the Sherman Act (15 U.S.C. § 1, 2).[2] The district court

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[1] 15 U.S.C. § 15 provides:

"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

[2] 15 U.S.C. § 1 provides in part:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the

[fol. 2111b] granted the defendant's motion for a directed verdict at the close of the plaintiff's case.[3]

Plaintiff (appellant), Case-Swayne, Inc., is engaged in the manufacture of single strength juices (canned orange juice and blends of orange juice with other fruit juice) as an independent operator. Defendant (appellee), Sunkist Growers, Inc., is an association of citrus producers.[4] It has as its base 12,000 citrus growers in Southern California and Arizona. The growers are organized into local associations which operate packing houses. The associations in turn are grouped into district exchanges and representatives from the exchanges make up the governing board of Sunkist. The Sunkist organization handles its members' fruit in effect from tree to store.

Appellant contends that the district court erred (1) in granting the defendant's motion for a directed verdict; and (2) in ruling that Sunkist was organized in conformance

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several States, or with foreign nations, is declared to be illegal: * * *"

* * *

Section 2 provides in part:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor * * *."

[3] At the close of plaintiff's case, the defendant moved for dismissal under Rule 41(b) F.R.Civ. P. or for a directed verdict under Rule 50(a). The court first indicated that it would dismiss pursuant to Rule 41(b), but later concluded that the motion for dismissal was improper and granted defendant's motion for a directed verdict under Rule 50(a).

[4] In addition to Sunkist Growers, Inc., the complaint named Exchange Orange Products Company and Exchange Lemon Products Company as defendants. Subsequently Exchange Orange and Exchange Lemon merged into Sunkist Growers, Inc., which assumed all of the obligations of the merged corporations, and the action was dismissed as to Exchange Orange and Exchange Lemon.

with section 1 of the Capper-Volstead Act[5] and therefore [fol. 2111c] could not be held in violation of section 1 of the Sherman Act for conspiracy to restrain and monopolize trade in product oranges. If Sunkist Growers, Inc., was in fact organized as an agricultural cooperative association pursuant to the Capper-Volstead Act,[5] as the district court found, any interorganizational dealings among the various agricultural cooperative associations are immune from the conspiracy provisions of section 1 of the Sherman Act;[6] but Sunkist may still be found liable under section 2 of the Sherman Act for wrongful use of monopoly power and attempt to monopolize.[7] The question presented under the first specification in error is whether the evidence was sufficient for the jury to find that Sunkist wrongfully used monopoly power or attempted to monopolize trade in product oranges.

In ruling on a motion for a directed verdict the trial court is required to view the evidence in the light most favorable to the party against whom the motion is made. "On appeal, likewise, the appellate court must consider the evidence in its strongest light in favor of the party against whom the motion * * * was made, and must give him the advantage of every fair and reasonable intendment that the evidence

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[5] Section 1 of the Capper-Volstead Act (7 U.S.C. 291) provides that, "Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: * * *"

[6] See Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., 1962, 370 U.S. 19, 82 S.Ct. 1130, 8 L.Ed.2d 305.

[7] See Maryland & Virginia Milk Producers Ass'n, Inc. v. United States, 1960, 362 U.S. 458, 80 S.Ct. 847, 4 L.Ed.2d 880; Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., supra.

can justify". 5 Moore's Federal Practice 2316 (2d.ed. 1951). This is true "even though contrary inferences might reasonably be drawn". Continental Ore Co. v. Union Carbide, 1962, 370 U.S. 690, 696, 82 S.Ct. 1404, 8 L.Ed.2d 777.

Sunkist controlled approximately 70% of all oranges produced in Southern California and Arizona, and approximately 67% of the oranges diverted to product use. Product or "excess" oranges are those not sold as fresh fruit. They are used to make various orange products and are the only kind used by plaintiff in its business. On a national basis Sunkist controlled 6 to 7% of the total production.

Other small cooperatives controlled for their own use approximately 18% of the oranges grown in Southern California and Arizona. The balance of the oranges, approxi- [fol. 2111d] mately 12%, represented those grown by independent growers and available to independent manufacturers.

Additional facts set forth in the order granting defendant's motion for directed verdict include the following;[8]

(1) Prior to the development of the citrus juice industry there was no market for fruit not required by the fresh fruit market, and the remainder of the fruit, then called "culls", was destroyed by the packing houses. With the development of the citrus juice industry, the demand for culls, now designated "excess fruit", could be sold to processors to convert into juice and other by-products.

(2) At the beginning of its processing activity plaintiff had no difficulty in obtaining at a reasonable price sufficient fruit for its needs. When it was demonstrated that conversion of excess fruit into juice and other citrus by-products was profitable, Sunkist decided to process its own fruit and for that purpose organized Exchange Orange Products Company and Exchange Lemon Products Company.

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[8] All of the facts are substantially in the language of the district court, although they do not appear in the court's order in the same sequence.

(3) Fruit not so processed was sold to independent processors, including plaintiff. Sunkist had excess fruit available for sale to independent processors only when it was unable to process its own fruit. For several years Sunkist sold its excess fruit to independent processors by a bid system. All independent processors, including plaintiff, were invited to present bids for fruit to be sold.

(4) As time went on and as Exchange Orange and Exchange Lemon developed processing capabilities, more and more excess fruit from Sunkist packing houses was channeled to Exchange Orange and Exchange Lemon until, at the present time, practically no Sunkist fruit is sold to independent processors.

(5) Plaintiff attempted to obtain from other mutual citrus associations its requirement of fruit to process, only to find that such associations had entered into individual contracts with other processors; hence plaintiff was able to obtain very little fruit supply from mutual associations.

[fol. 2111e] (6) Approximately 12,000 citrus fruit growers annually signed contracts with Sunkist agreeing to sell fruit through the Sunkist organization. The contracts provided that if a grower did not abide by his contract, sanctions might be imposed. Occasionally a grower failed to sell his fruit to Sunkist, and sanctions were imposed by the Sunkist organization.

(7) Sunkist trade-mark or trade name was a valuable asset, and defendant had spent large sums in establishing its trade-mark or trade name.

(8) Sunkist employees observed operations of member growers to make certain that the growers handled their crops through the Sunkist organization and if it was discovered that a member grower sold fruit contrary to his contract, a report was made to Sunkist and, in certain instances, penalties were imposed upon the violating grower.

(9) The Department of Agriculture, pursuant to the school lunch program, requested bids for single strength

orange juice. One year Sunkist bid but did not receive the contract and another year, Sunkist bid and was awarded the contract.

(10) Sunkist made a large profit from sale of citrus fruit.

(11) The great majority of citrus grown in Southern California and Arizona goes into the fresh fruit market. The greater amount of oranges grown in Florida goes into the citrus products market. Fresh fruit from California, Arizona and Florida compete on the eastern and foreign markets.

(12) It was possible for processors in Florida to make single strength orange juice, can and ship it to California, and sell it at the same price as (or at a price lower than) the Southern California-Arizona produced juice. Florida processors of single strength orange juice could assimilate transportation costs from Florida to California and sell their product in competition with single strength orange juice made within the Southern California-Arizona area. This was possible because of the lower price for which Florida fruit could be purchased.

(13) The price paid for Florida oranges was the dominant factor in determining the price for which single strength orange juice could be sold to the ultimate consumer.

[fol. 2111f] (14) There is also competition between single strength orange juice and orange juice concentrates. Neither of the parties is a producer of concentrated or frozen juice.

The alleged violations of the Sherman Act arise out of "Sunkist's dominant control of oranges grown in Arizona and California together with its vertical integration and dual distribution with respect to oranges designated for product use . . .". More particularly, plaintiff complains that it was unable to purchase oranges for product use

from Sunkist at a price that would enable it to compete with canned juice shipped in from Florida.[9]

The district court's granting of the directed verdict was premised upon the conclusion that the "relevant market" was national rather than limited to California-Arizona, and that in light of this plaintiff had not shown evidence of an illegal monopoly.[10]

The cases uniformly hold that "a party has monopoly power if it has over 'any part of the trade or commerce among the several states', a power of controlling prices or unreasonably restricting competition". United States v. du Pont & Co., 1956, 351 U.S. 377, 389, 76 S.Ct. 994, 100 L.Ed. 1264. In determining whether a party has monopoly power it is first essential to define the "relevant market".

This court has held that determination of the relevant market, "both as respects products and as concerns geographical area" is a "necessary step precedent to determining whether within that market there was a probability" of violation of section 7 of the Clayton Act. Crown Zellerbach Corporation v. F.T.C., 1961, 296 F.2d 800, 804 (cert. denied (1962)), 370 U.S. 937, 82 S.Ct. 1577, 8 L.Ed.2d 806. While Crown Zellerbach involved a violation of the Clayton Act with respect to corporate acquisitions, it is clear that the same determination must be made regarding the rele- [fol. 2111g] vant market in actions for violation of section 2 of the Sherman Act. United States v. du Pont & Co., supra.

In the recent case of United States v. Grinnell Corp., 1966, 384 U.S. 563, ... S.Ct. ....., ... L.Ed.2d ....., a

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[9] This is not a complete statement of the alleged monopolistic acts of Sunkist, but it is the act upon which plaintiff places the most emphasis.

[10] The district court initially was of the opinion that the relevant market was Southern California and Arizona, but concluded, when all of the evidence was presented, that the relevant market for product oranges was a national market, "and that whatever happened in Florida directly affected prices in California and vice versa. Prices paid for oranges in California depended substantially upon the price for which oranges were sold in Florida".

civil suit for alleged violations of section 2 of the Sherman Act, the Court said in part:

> "* * * That * * * case arose under § 7 of the Clayton Act where the question was whether the effect of a merger 'in any line of commerce' may be 'substantially to lessen competition.' We see no reason to differentiate between 'line' of commerce in the context of the Clayton Act and 'part' of commerce for purposes of the Sherman Act." (384 U.S. at 573).

In determining the "relevant market" applicable in this case, it seems advisable first to analyze separately the factors involved in both the relevant *product* market and the relevant *geographic* market.

Relevant Product Market

United States v. du Pont & Co., supra, relied upon by the district court in granting Sunkist's motion for a directed verdict, promulgated the test of "reasonable interchangeability" to determine the relevant product market. The Government contended that cellophane was the relevant product market. The Court assumed that if this were true, du Pont would have monopoly power over that market. The Court found, however, that cellophane was "reasonably interchangeable" with other flexible wrappings, and that the relevant product market accordingly was "flexible packaging materials" rather than cellophane alone.

The rule of "reasonable interchangeability" has been refined and modified in subsequent cases. In particular, the courts have recognized that there may be an outer market and one or more inner submarkets within which competitive effects are to be appraised, i.e. a relevant submarket may constitute the product market for antitrust purposes.

In Brown Shoe Co. v. United States, 1962, 370 U.S. 294, 82 S.Ct. 1502, 8 L.Ed.2d 510, involving a merger found to be in violation of section 7 of the Clayton Act, the Court said in part:

[fol. 2111h] "The 'area of effective competition' must be determined by reference to a product market (the 'line of commerce') and a geographic market (the 'section of the country')."

"The Product Market

"The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it. However, within this broad market, well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes. (citation) The boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors." (370 U.S. at 324-5).

The rule of Brown Shoe was expressly applied to cases arising under section 2 of the Sherman Act in the recent case of United States v. Grinnell Corporation, supra, where the Court said:

"In § 2 cases under the Sherman Act, as in § 7 cases under the Clayton Act (Brown Shoe Co. v. United States, 370 U.S. 294, 325) there may be submarkets that are separate economic entities." (384 U.S. at 573).

Relevant Geographic Market

In Brown Shoe, supra, the Court also set forth criteria to be used in determination of the geographic market:

"The Geographic Market

"The criteria to be used in determining the appropriate geographic market are essentially similar to

those used to determine the relevant product market. See S. Rep. No. 1775, 81st Cong. 2d Sess. 5-6; United States v. E. I. du Pont de Nemours & Co., 358 U.S. 586, 593. Moreover, just as a product submarket may have § 7 significance as the proper 'line of commerce', so may a geographic submarket be considered the appropriate 'section of the country.' (Citing cases). Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal, [fol. 2111i] legalistic one. The geographic market selected must, therefore, both 'correspond to the commercial realities' of the industry and be economically significant. Thus, although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area." (370 U.S. at 336-7).

In the recent case of United States v. Pabst Brewing Company, et al., 1966, 384 U.S. 546, 552, ... S.Ct. ....., ... L.Ed.2d ....., involving the acquisition in 1958 by Pabst Brewing Company of Blatz's Brewing Company, the Court held that the "evidence as to the probable effect of the merger on competition in Wisconsin, in the three-state area (Wisconsin, Illinois and Michigan), and in the entire country was amply sufficient to show a violation of § 7 (of the Clayton Act as amended by the Celler-Kefauver Anti-Merger Amendment)[11] in each and all of these three areas". In 1957, prior to the merger, the two companies had combined sales which accounted for 23.95% of the beer sales in Wisconsin, 11.32% of the sales in the three-state area, and 4.49% of the sales throughout the country.

The Court was unanimous in holding that the district court erred in dismissing the complaint. Mr. Justice Harlan (joined by Mr. Justice Stewart) in a concurring opinion agreed with the district court that viewing the entire con-

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[11] 38 Stat. 731, as amended, 64 Stat. 1125, 15 U.S.C. § 18 (1964 ed.).

tinental United States as a relevant market, the evidence did not sustain the Government's contention that the acquisition might substantially lessen competition. They agreed with the majority opinion, however, as did Mr. Justice Fortas, that the Government's evidence was sufficient to establish prima facie that Wisconsin and the tri-state area were proper "sections of the country" in which to measure the probable effects of the acquisition.

In his concurring opinion, Mr. Justice Harlan said in pertinent part:

> "The appropriate geographic area in which to examine the effects of an acquisition is an area in which the parties to the merger or acquisition compete, and around which there exist economic barriers that significantly impede the entry of new competitors. * * *" (384 U.S. at 556-7).

[fol. 2111j] Whether a geographical location is or is not an "area of effective competition" is a question of fact in each case. United States v. Columbia Pictures Corporation, S.D. N.Y., 1960, 189 F.Supp. 153, 192. The area may be limited by differences in costs of production and transportation. Erie Sand & Gravel Co. v. F.T.C., 3 Cir. 1961, 291 F.2d 659, 281. "A competitive price disadvantage arising from transportation costs is an important factor in determining the scope of a relevant market". United States v. Penn-Olin Chemical Company, D. Del., 1963, 217 F.Supp. 110, 120; American Crystal Sugar Co. v. Cuban-American Sugar Co., S.D. N.Y., 1957, 152 F.Supp. 387, 398, Aff'd. 2 Cir. 1958, 259 F.2d 524.

It seems clear from the decided cases that (1) while the outer limits of the market may be determined by the competition of interchangeable products, (2) there may be a well-defined submarket which constitutes the relevant market for antitrust purposes, which (3) must correspond to the commercial realities of the industry, (4) is affected by price disadvantages due to transportation costs, (5) is affected by availability of a buyer to supply and existence

of economic areas which significantly impede competition, (6) is determined in part with relation to the parties affected in the suit, and (7) is a question of fact in the particular case.

We come now to an application of the criteria for determining both relevant product market and relevant geographic market to the facts in this case. In advance of trial it was the position of the trial court, as set forth in its pretrial order, that the relevant product market was product oranges and the relevant geographic market Southern California and Arizona. At the close of plaintiff's case, the court was persuaded that the relevant product market included orange juices and concentrates and that the relevant geographic market was national rather than limited to Southern California and Arizona.[12]

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[12] In ruling on defendant's motion for dismissal or a directed verdict, following argument by counsel, the court said:

"I was of the opinion that Florida was not a part of the market; that it was to be limited to Southern California and Arizona. I was of the opinion and still am of the opinion that it would certainly be uneconomical to try to ship fresh fruit from Florida or from Texas to California for the purpose of being converted into orange juice. So I have to look first to what is the competition in this case, what are the competitive factors?

"Well, if we include Florida as part of the market, then of course Sunkist does not have a dominant place in this picture at all. It is a very minor part of the conversion of fresh fruit into orange juice, if we consider Florida as a part of the market.

"Then I thought we were talking about product oranges, the monopoly of product oranges. But it seems to me that we now are talking about product oranges, but also about the juice squeezed from the product oranges. I don't know how you can say that there is a monopoly on product oranges without saying there is a monopoly on the juice that is squeezed from product oranges." (Rep. Tr. 1378:1-20).

"So it seems to me that when we talk about competition, we are going to talk about competition not only of the fruit before it is squeezed, but the product after the squeezing, that is the orange juice.

"Well, if you consider it in that light, then there is lots of competition on the shelves of Southern California, because the

[fol. 2111k] It is clear from the evidence that *orange products* (single strength juice and frozen concentrates) were sold in a national market. Oranges could be processed in Florida, and the juice shipped to California and sold competitively with juice processed in California from California oranges. Sunkist held a relatively small part of this national market and controlled neither quantity nor price.

On the other hand, it is equally clear that it was uneconomical for producers of orange products to buy their *product oranges* in Florida or elsewhere than in the Southern California-Arizona area. Sunkist controlled 70% of all oranges grown in this area and 67% of the product oranges. A substantial portion of the remaining product was unavailable to Case-Swayne.

Appellee does not question these facts, but contends that the relevant geographic market for product oranges was na-[fol. 2111 l] tional on the theory that the product orange supply is tied irrevocably to orange product price. Appellee argues that product oranges "have value only because they can be converted into a product which has value", and that "the value of product oranges cannot exceed that which will permit them to be processed into products and then compete in a national products market dominated by Florida".

While product oranges may have little, if any, value per se, the same is true of many raw products. The market for raw products is among the processors rather than the ultimate consumer. We see no reason why the raw product may not be the relevant product market, even though it has little value in its raw state. Moreover, it is clear from the recent case of United States v. Pabst Brewing Company, supra, that even as to the processed product, the relevant

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testimony is that the Florida producers, the Florida producers of orange juice, that is, those who squeeze the oranges to make orange juice in Florida, can ship it to Los Angeles, pay the shipping charges, and undersell the California product.

"So from these two standpoints, that is talking about competition, what is competition—competition is the competition in the open marketplace." (Rep. Tr. 1379:9-22).

market may at the same time be national, regional, and statewide in area.[13]

While Sunkist could not control the supply or price of canned juices because of competition from Florida in these products, there was substantial evidence that it did control the supply of product oranges from which juice was made in California and Arizona. In determining the relevant geographic market, a proper test is the "geographic structure of supplier-customer relations." United States v. Philadelphia National Bank, et al., 1963, 374 U.S. 321, 357, 83 S.Ct. 1715, 10 L.Ed.2d 915. The relevant market is determined in part by the market area "to which the purchaser can practicably turn for supplies". Tampa Electric Co. v. National Coal Co., 1961, 365 U.S. 320, 327, 81 S.Ct. 623, 5 L.Ed.2d 580.[14] There is no question that Case-Swayne and other users of product oranges could not as a practical matter obtain product oranges from suppliers outside California and Arizona.

[fol. 2111m] Moreover, even though the price of product oranges in Florida would influence the price of product oranges in California, there was evidence from which the jury might find that Sunkist by reason of its control of the supply also as a practical matter controlled the price.[15]

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[13] We concluded in Sunkist Growers, Inc. v. Winckler & Smith Citrus Prod. Co., 9 Cir. 1960, 284 F.2d 1, that the relevant market area for oranges and by-products, including fruits and juices, was the California-Arizona area, although it does not appear that the parties in that case argued or the court considered the distinction between product oranges and orange products or any contention that the market was national.

[14] See also Standard Oil Co. v. United States, 1945, 337 U.S. 293, 299, note 5, 69 S.Ct. 1051, 93 L.Ed. 1371.

[15] Morgan Ward, who handled the oranges of most of the independent growers, testified in pertinent part:

"Q Is it your opinion, then, that the market conditions with respect to Florida product oranges have more effect on the price of product oranges in California than any one factor?

"A They have effect on the over-all United States. Then those who set prices on the fruit in California look at what is

That is particularly true if it should be found that Sunkist refused to sell to plaintiff and other independent buyers at any price.

As Mr. Justice Fortas said in his dissenting opinion[16] in the recent case of United States v. Grinnell Corporation, supra, "The central issue is where does a potential buyer look for potential suppliers of the service—what is the geographical area in which the buyer has, or, in the absence of monopoly, would have, a real choice as to price and alternative facilities? This depends upon the facts of the market place, taking into account such economic factors as the distance over which supplies and services may be feasibly furnished, consistently with cost and functional efficiency." (384 U.S. at 589).

We conclude that there was evidence from which the jury might properly find that the relevant product market was product oranges and the relevant geographic market Southern California-Arizona.

[fol. 2111n] *Evidence of Wrongful Use of Monopoly Power and Attempt to Monopolize*

If the jury should find that Southern California and Arizona was the relevant market, there was sufficient evidence from which the jury could find further that Sunkist engaged in monopolistic practices or an attempt to monopolize proscribed by section 2 of the Sherman Act.

As the Court said in United States v. Grinnell Corp., supra:

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going on all over the United States, and at that time the prices were set in California by the leading growers, Sunkist set it, using all those things to do it, I assume. But the price of by-products in this state has ever since I have been in the business since 1934, been set by Sunkist. At one time it was called California Fruit Growers Exchange, and Sunkist at this time." (Rep. Tr. 392:1-14).

[16] Justices Fortas, Stewart and Harlan would have remanded for a "new determination" of the basic issue of "the definition of the relevant market".

"The offense of monopoly under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident."

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"In United States v. du Pont & Co., 351 U.S. 377, 391, we defined monopoly power as 'the power to control prices or exclude competition.' The existence of such power ordinarily may be inferred from the predominant share of the market. In American Tobacco Co. v. United States, 328 U.S. 781, 797, we said that 'over two-thirds of the entire domestic field of cigarettes and . . . ; over 80 per cent of the field of comparable cigarettes' constituted 'a substantial monopoly.'" (384 U.S. at 570-1).

It is clear that Sunkist had possession of monopoly power in the relevant market, if that market is found to be the Southern California-Arizona area.

It is true, as appellee contends, that size alone does not constitute an offense under the Sherman Act; nor does the mere possession of monopoly power. It is the wrongful use and exercise of that power which is proscribed by section 2 of the Act.

However, the ultimate consideration in determining whether an alleged monopolist violates section 2 of the Sherman Act is "whether the defendants control the price and competition in the market for such part of trade or commerce as they are charged with monopolizing". United [fol. 2111o] States v. du Pont & Co., supra, 351 U.S. at 380. It is not always necessary to find a specific intent to find that an antitrust law has been violated. "It is sufficient that a restraint of trade or monopoly results as the consequence of a defendant's conduct or business arrangements

(citing cases). To require a greater showing would cripple the Act. As stated in United States v. Aluminum Co. of America, 148 F.2d 416, 432, 'no monopolist monopolizes unconscious of what he is doing.' Specific intent in the sense in which the common law used the term is necessary only where the acts fall short of the results condemned by the Act." United States v. Griffith, 1948, 334 U.S. 100, 105, 68 S.Ct. 941, 92 L.Ed. 1236.

Appellant contends that Sunkist wrongfully exercised its monopoly power through (1) boycotting appellant by refusing to sell appellant product oranges while selling to other processors; (2) preventing TreeSweet from delivering oranges TreeSweet had committed to appellant; (3) controlling orange prices; and (4) eliminating competitors (or as with appellant, limiting their profits) by maintaining high prices for oranges or reducing supply.

The same acts are relied upon in support of appellant's contention that Sunkist intentionally attempted to monopolize the trade in product oranges in the relevant market. Appellant relies upon additional evidence of such intent in Sunkist's (1) admitted purpose to control all the oranges it could get and utilize all of them in its own manufacturing facilities; (2) preventing Placentia Orange Distributors from fulfilling its promise to sell appellant 5,000 tons of oranges in 1957; (3) policing the Sunkist system to punish violators of the Sunkist "restrictive tying contracts"; (4) wrongful use of dual distribution by lowering single strength juice prices after competing manufacturers had purchased product oranges at prices established by Sunkist; (5) use of consignment contracts and its low 1956 bid (compared with its 1955 bid) to the Department of Agriculture.

Appellee recognizes in its brief that "the key determination by the trial court was that the appellant's evidence * * * established the fact that the relevant market for product oranges is a national market", but contends further that "under each of the tests which the courts have applied to de- [fol. 2111p] termine whether or not a monopoly exists, the

appellant's evidence conclusively established that there was no monopoly", and that with respect to each of the acts and incidents upon which appellant relies, Sunkist's conduct was "legitimate, cooperative activity and not undertaken in an unlawful manner or for an unlawful purpose". There is substantial evidence to support appellee's denial of each of the alleged acts of monopoly.

In determining the issues of monopolization and intent to monopolize, however, the evidence must be viewed as a whole. Even though the proof as to each of the specific acts may be insufficient in itself to establish wrongful use of monopoly power, the jury must look at the "whole picture", weigh the contradictory evidence and inferences and draw the "ultimate conclusion as to the facts". See Continental Ore Co. v. Union Carbide and Carbon Corp., supra, 370 U.S. at 699-701, and cases there cited.

As noted supra, in ruling on the directed verdict this court must give appellant "the advantage of every fair and reasonable intendment that the evidence can justify", and this is true "even though contrary inferences might reasonably be drawn". From a review of the record we conclude that there was sufficient evidence to submit to the jury the question of whether Sunkist wrongfully exercised its monopoly power and intentionally attempted to monopolize the trade in product oranges. We do not find that appellant has established any of the alleged acts of monopoly—only that viewing the evidence as a whole, it has made a prima facie case for the jury.[17]

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[17] In Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., supra, the plaintiff relied upon some of the acts of monopoly here alleged. We upheld the submission of the case to the jury and the instructions given by the trial court. The Supreme Court granted certiorari limited to the issue of the immunity of inter-organizational dealings among the three cooperatives from the conspiracy provisions of the antitrust law, and held that as a Capper-Volstead cooperative Sunkist was immune and that the case was erroneously submitted to the jury on the theory of a conspiracy under section 1 of the Act. Having held "erroneous one theory of liability upon which the general verdict may have rested * * *

[fol. 2111q] *Section 1 of the Capper-Volstead Act*

Appellant contends that Sunkist is not a person "engaged in the production of agricultural products" under Section 1 of the Capper-Volstead Act because only 80.12% of its members are associations composed of fruit growers, while 4.97% are corporate growers, and 14.91% are private profit-making corporations, individuals and partnerships which market through Sunkist the oranges they have purchased from growers.[18]

The district court concluded, and we think correctly, that under the decision of the Supreme Court in Sunkist Growers, Inc. v. Winckler & Smith Co., supra, Sunkist Growers, Inc., is a cooperative organized in compliance with Section 1 of the Capper-Volstead Act. It is true, as appellant argues, that this issue was not specifically raised in the Winckler case, but the Court did describe the Sunkist organization in detail. This was prior to the merger with Exchange Orange and Exchange Lemon, but the Court con-

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it is unnecessary * * * to explore the legality of the other theories". The Court said further that its decision "in no way detracts from earlier cases holding agricultural cooperatives liable for * * * monopolization", citing Maryland & Virginia Milk Producers Ass'n. v. United States, supra. Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., 370 U.S. at 20-30.

[18] A stipulation of the parties defining "association" in the Sunkist system recites that the members are classified into three major groups: (1) cooperative associations (80.12% by number and 82.34% by volume), (2) corporate growers (4.97% by number and 4.72% by volume), and (3) agency associations (14.91% by number and 12.94% by volume). The stipulation reads in part: "The Agency Association is normally a private corporation which owns and operates packing house facilities * * *. Such Agency Associations do not qualify as, nor do they claim to be, cooperative associations under section 1 of the Capper-Volstead Act. * * * The Agency Association does not itself participate in either the gain or loss involved in marketing fruit through Sunkist beyond the recovery of its costs and fixed fee for packing. Such Agency Association furnishes its facilities and services on an independent contract basis, wholly unrelated to the net returns from the sale of the product handled". (Clk. Tr. 1792-4).

cluded that the 12,000 growers were "in practical effect and in the contemplation of the statutes one 'organization' or 'association' even though * * * formally organized * * * into three separate legal entities". (370 U.S. at 29). The Court also said in pertinent part:

> "The language of the Capper-Volstead Act is specific in permitting concerted efforts by farmers in the proc- [fol. 2111r] essing, preparing for market, and marketing of their products. And the legislative history of the Acts reveals several references to the Sunkist organization—then called the California Fruit Growers Exchange and numbering 11,000 members—including a suggestion by Senator Capper that this was a type of cooperative that would find 'definite legalization' under legislation. * * *
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> "* * * That the packing is done by local associations, the advertising, sales, and traffic by divisions of the area association, and the processing by separate organizations does not in our opinion preclude these growers from being considered one organization or association for purposes of the Clayton and Capper-Volstead Acts." (370 U.S. at 28-29).

With respect to appellant's contention that Sunkist is not a qualified cooperative under Capper-Volstead by reason of its "corporate growers", this question was raised in the district court in United States v. Maryland & Virginia Milk Producers Ass'n, D. D.C. 1958, 167 F.Supp. 45, aff'd in part, reversed in part on other grounds, 362 U.S. 458, 80 S.Ct. 847, 4 L.Ed.2d 880. In that case the Government urged that the words "dairymen" and "farmers" should be restricted to natural persons. The district court held that it was immaterial "whether every member of the association is a natural person or a corporation." [19]

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[19] The court said further:

"* * * The owner or operator of a dairy is a dairyman, whether he personally works on his dairy or has the work done by

The Supreme Court did not comment on this portion of the district court's opinion, although it considered at length the scope of the immunity granted by Capper-Volstead. It is clear from the district court's opinion that the cooperative included corporate growers. It seems likely that this fact would have been considered by the Supreme Court if there were any question regarding the status of the association as a qualified cooperative by reason of the corporate growers.

[fol. 2111s] 1 U.S.C. 1 provides that in "determining the meaning of any act * * * of Congress, unless the context indicates otherwise * * * the words 'person' and 'whoever' includes corporations * * * as well as individuals * * * ".

We find nothing in the context of the Capper-Volstead Act to indicate that a corporation would not be considered a person within the meaning of the Act.

Does the fact that the so-called agency associations (comprising 14.91% by number and 12.94% by volume) constitute a "class" of membership prevent Sunkist from being a "person engaged in the production of agricultural products" under section 1 of the Act? It will be noted from the stipulation of the parties (note 18) that the agency associations furnish their facilities and services on an independent contract basis, and that they do not participate in either gain or loss involved in marketing fruit through Sunkist. In other words, the growers receive full benefit of cooperative marketing through the agencies.

Associations organized under the Capper-Volstead Act "may make the necessary contracts and agreements to effect" the purposes of the Act, i.e., "collectively processing, preparing for market, handling, and marketing" their products. (7 U.S.C. 291). The agency associations supply services which the growers require (packing house facilities) in handling and marketing their products. The fact that the

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employees. So, too, the owner of a farm may be regarded as a farmer even though he devotes the major portion of his activities to other pursuits. * * *." (167 F.Supp. at 49).

"packing is done by local associations * * * and the processing by separate organizations" does not preclude the growers from being considered one association for purposes of the Capper-Volstead Act. Sunkist Growers, Inc. v. Winckler & Smith Co. supra.

This is not a case where the agreement in question goes beyond the legitimate objects of processing and marketing. See e.g. United States v. Borden Co., 1939, 308 U.S. 188, 60 S.Ct. 182, 84 L.Ed. 181. The Court there recognized that agricultural producers "may unite in preparing for market and in marketing their products", and may "make the contracts which are necessary for that collaboration", but they are not authorized to conspire with others in restraint of trade. The Court said in part:

> "In this instance, the conspiracy charged is not that of merely forming a collective association of producers [fol. 2111t] to market their products but a conspiracy, or conspiracies, with major distributors and their allied groups, with labor officials, municipal officials, and others, in order to maintain artificial and non-competitive prices to be paid to all producers for all fluid milk produced in Illinois * * * and also to control 'the supply of fluid milk permitted to be brought to Chicago'." (308 U.S. at 205).

In Maryland & Virginia Milk Producers Association v. United States, supra, the court pointed out that the object of the conspiracy or combination was to eliminate a competitor and that the "allegations of the complaint * * * charge *anticompetitive activities which are so far outside the 'legitimate objects' of a cooperative* that, if proved, they would constitute clear violations of § 2 of the Sherman Act * * *." (362 U.S. at 468). (Emphasis added). The Court said further:

> "The Embassy assets the Association acquired are useful in processing and marketing milk, and we may assume, as it is contended, that *their purchase simply for*

business use, without more, often would be permitted and would be lawful under the Capper-Volstead Act. * * * The contract of purchase here, viewed in the context of all the evidence and findings, *was not one made merely to advance the Association's own permissible processing and marketing business;* it was entered into by both parties, according to the court's findings as we understand them, because of its usefulness as a weapon to restrain and suppress competitors and competition * * *." (362 U.S. at 471-72). (Emphasis added).

The independent contracts with the agency associations were for the legitimate objects of processing and marketing. Under the statute Sunkist could have entered into these contracts "with separate organizations". The mere fact that the agency associations constitute a "class" of membership does not in our opinion change the effect of the agency agreements or destroy the exempt status of the entire association.

[fol. 2111u]

Request for Leave to File Second Supplemental Complaint

Appellant next contends that the district court abused its discretion in denying plaintiff's motion to file a second supplemental complaint alleging facts occurring after the filing of the original complaint. In our opinion, upon remand of this case, appellant should be permitted to file the supplemental complaint. As the Court said in Texarkana v. Arkansas Gas Co., 1939, 306 U.S. 188, 59 S.Ct. 448, 83 L.Ed. 598:

"Where there is a good cause of action stated in the original bill, a supplemental bill setting up facts subsequently occurring which justifies other or further relief is proper. If the original decree in the trial court had not been entered, this supplemental petition would

simplify the controversy. We think this procedure is equally applicable after remand for further proceedings." (306 U.S. at 203).

Alleged Prejudice and Bias of Trial Judge

Finally appellant contends that the trial judge showed such marked prejudice against appellant that this court should order a new trial before another judge. In our opinion, the record does not support our issuance of the requested order. We are confident that the district court, upon remand and in the proper administration of its own functions, will insure that the retrial is conducted in the necessary atmosphere of total impartiality.

It Is Ordered that the judgment be reversed and the cause remanded to the district court for a new trial.

ELY, Circuit Judge (Dissenting in part):

I agree with the result reached by the majority, and I concur in its opinion except for that portion in which it is held that Sunkist falls within the exemption of section 1 of the Capper-Volstead Act, 7 U.S.C. § 291.

The principal reason offered by the majority in support of the view which I question is its asserted belief that the question was settled in *Sunkist* v. *Winckler & Smith Co.*, 370 U.S. 19, 8 L. Ed. 2d 305, 82 Sup. Ct. 1130 (1962). I do not so interpret that decision. The particular issue was not presented to the Supreme Court, and it was not [fol. 2111v] adjudicated. It was apparently conceded by the parties in *Winckler*, of which the appellant here was not one, that Sunkist was covered by the Capper-Volstead exemption. In the prior opinion of the Court of Appeals, reported at 284 F.2d 1 (9th Cir. 1960), the only discussion of the exemption pertained to its extent, not to whether or not it was applicable. Furthermore, the Supreme Court, in granting certiorari, 368 U.S. 813 (1961), expressly limited its consideration to a single question, namely,

> "Where a group of citrus fruit *growers* form a cooperative organization for the purpose of collectively processing and marketing their fruit, and carry out those functions through the agency of three cooperative agricultural associations, each of which is basically *wholly owned and governed by those growers, and each of which is admittedly entitled to the exemption from the antitrust laws accorded to agricultural cooperatives by the Capper-Volstead Act* (7 U. S. C. A., sec. 291)—is an unlawful conspiracy, combination or agreement established under Sections 1 and 2 of the Sherman Act upon proof only that these *growers*, through the agency of these three cooperatives, *agreed among only themselves* with respect to the extent of the division of the function of processing between them or with respect to the price they would charge in the open market for the fruit and the by-products thereof processed and marketed by them?" (Emphasis supplied.)

Even if the issue had been determined by the Supreme Court in *Winckler*, the admitted nature of Sunkist's present organizational make-up is such that the exemption should no longer be held properly to apply. The privilege to act together in "exempt" associations is conferred only upon "persons engaged in the production of agricultural products. . . ." 7 U.S.C. § 291. The plain import of the statutory language is that such an association must be composed *solely* of agricultural producers. Regardless of whether Sunkist was thus composed at the time of the *Winckler* decision in 1962, as the Supreme Court's order granting certiorari, *supra*, indicates, it is clear that the composition is no longer the same. In our case, it is conceded that the so-called "agency associations," which comprise almost 15% of the membership of the Sunkist organization, are [fol. 2111w] *not* growers or producers.[1] The majority, in

[1] In its footnote 18, the majority refers to a portion of a stipulation wherein the parties agreed that the agency associations furnished to Sunkist their "facilities and services on an independent

disregarding the significance of this factor, may have been influenced by the absence of decisions squarely holding that an association must be composed entirely of growers in order to qualify for the exemption. I point out that, while there are no decisions to that effect, there are none to the contrary. The opinions in a number of cases contain language which suggests the conclusion which I see to be plainly required by the statute's terms. Some of this language is as follows:

> "The persons to whom the Capper-Volstead Act applies are defined in § 1 as *producers of agricultural products* . . . . *They* are authorized to act together 'in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce' their products . . . .
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> "The right of *these agricultural producers* thus to unite . . . cannot be deemed to authorize any combination or conspiracy *with other persons* in restraint of trade that these producers may see fit to devise." *United States v. Borden Co.*, 308 U.S. 188, 204-205, 84 L. Ed. 181, 60 Sup. Ct. 182 (1939) (Emphasis supplied.).

> "The chief defense set up by the Association was that, because of its being a cooperative composed *exclusively of dairy farmers,* § 6 of the Clayton Act and §§ 1 and 2 of the Capper-Volstead Act completely exempted and immunized it . . . . Accordingly the court dismissed the Sherman Act § 2 monopolization charge, where the

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contract basis . . . ." The stipulation does *not* say that the associations were independent contractors. It recites that they were "*members*" of the Sunkist system. If the association were truly separate and independent, then that determination should be made, in the first instance, by the District Court. If they were not "members" of the Sunkist system, then, as I see it, the exemption of the Capper-Volstead Act is irrelevant to the issue of the propriety of Sunkist's dealings with them. *United States v. Borden Co., supra.*

Association was not alleged to have acted in combination with others, but upheld the right of the Government to go to trial on the Sherman Act § 3 and Clayton Act § 7 charges *because they involved alleged activi-* [fol. 2111x] *ties with* the owners of Embassy and other *persons who were not agricultural producers.*" *Milk Producers Assn. v. U.S.*, 362 U.S. 458, 461-462, 4 L. Ed. 2d 880, 80 Sup. Ct. 847 (1960) (Emphasis supplied.).

"Thus, the full effect of § 6 is that a *group of farmers* acting together . . . cannot be restrained . . . .

"The Capper-Volstead Act . . . extended § 6 of the Clayton Act exemption to capital stock agricultural cooperatives . . . . the general philosophy of both was simply that *individual farmers* should be given . . . . the same unified competitive advantage . . . available to businessmen . . . . ." *Id.*, 362 U.S. at 465-466 (Emphasis supplied.).

"[O]ur decision in no way detracts from earlier cases holding agricultural cooperatives liable for conspiracies with outside groups, *United States v. Borden Co.*, 308 U.S. 188 . . . ." *Sunkist v. Winckler & Smith Co.*, 370 U.S. 19, 30, 8 L. Ed. 2d 305, 82 Sup. Ct. 1130 (1962).

"The Court concludes that a combination between two or more agricultural cooperatives to fix prices of their products is exempt from the antitrust laws *provided that no other person that is not such an organization or a member of such a group is a part of the combination.*" *United States v. Maryland Cooperative Milk Pro.*, 145 F. Supp. 151, 155 (D.D.C. 1956) (Emphasis supplied.).

"*Although* the Capper-Volstead Act . . . and the Clayton Act . . . give *some privileges to combinations* of agricultural *producers, a combination of producers and distributors* to eliminate competition and fix prices at successive stages in the marketing of an agricultural

product *is not privileged." United States v. Maryland & Virginia Milk Pro. Ass'n,* 179 F.2d 426, 428 (D.C. Cir. 1949) (Emphasis supplied.).

"The exemptions are accorded and immunities are conferred on agricultural cooperatives and their activities. *When they* step outside of their field and *conspire with persons who are not producers of agricultural commodities,* they are *beyond the scope of the exemptions." United States v. Maryland & Virginia Milk Pro. Ass'n,* 167 F. Supp. 45, 51-52 (D.D.C. 1958), *modified,* 362 [fol. 2111y] U.S. 458, 4 L. Ed. 2d 880, 80 Sup. Ct. 847 (1960) (Emphasis supplied.).

The persistent theme of the foregoing excerpts is that a cooperative, even though it otherwise qualifies for exemption under the Capper-Volstead Act, forfeits its exemption when it combines with non-producers. If that is so, then it is logically inconsistent to hold that a cooperative, while composed in part of nonproducers, may yet qualify for the exemption.

[fol. 2111z]

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 20,070

CASE-SWAYNE CO., INC., a corp., Appellant,

vs.

SUNKIST GROWERS, INC., a corp., Appellee.

JUDGMENT—Filed and entered November 21, 1966

Appeal from the United States District Court for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and that this cause be and hereby is remanded to the said District Court for a new trial, with costs in this Court in favor of the appellant and against the appellee:

Costs:

Docket fee:	$ 25.00
Repro. costs;	151.71
Premium on bond:	100.00
Reporter's trans.	1960.00
Total:	$2236.71

[fol. 2111aa]

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Before: Jertberg and Ely, Circuit Judges, and Jameson, District Judge.

MINUTE ENTRY OF ORDER DENYING PETITIONS FOR REHEARING —January 12, 1967

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant filed on December 16, 1967, and the petition of the appellee filed on December 22, 1967, and within time allowed therefor by rule of Court, for a rehearing of above cause be, and hereby are denied.

[fol. 2111bb] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 2111cc]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1966

SUNKIST GROWERS, INC., Petitioner,

vs.

CASE-SWAYNE CO., INC.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—April 12, 1967

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 1, 1967.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 12th day of April, 1967.

[fol. 2111dd]

SUPREME COURT OF THE UNITED STATES

No. 1157, October Term, 1966

CASE-SWAYNE CO., INC., Petitioner,

v.

SUNKIST GROWERS, INC.

ORDER ALLOWING CERTIORARI—May 15, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.